

substantive requirements or coverage of the standards themselves. These amendments do not modify or revoke existing rights or obligations, nor do they establish new ones. The amendments are necessary to clearly and properly inform the regulated community of the welding standards currently applicable to them. OSHA concludes, therefore, that rulemaking procedures and delayed effective dates are unnecessary and contrary to the public interest.

List of Subjects in 29 CFR Part 1910

Welding, Occupational safety.

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), 5 U.S.C. 553, Secretary of Labor's Order No. 1-90 (55 FR 9033), and 29 CFR part 1911, title 29, part 1910, of the Code of Federal Regulations is amended as set forth below.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for subpart H of part 1910 is revised to read as follows:

Authority: Sections 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736) or 1-90 (55 FR 9033), as applicable.

Sections 1910.103, 1910.106, 1910.107, 1910.108 and 1910.109 are also issued under 29 CFR part 1911.

Section 1910.110 is also issued under 5 U.S.C. 553 and 29 CFR part 1911.

Section 1910.111 is also issued under 29 CFR part 1911.

Section 1910.120 is also issued under sec. 126 of the Superfund Amendments and Reauthorization Act of 1986 as amended (29 U.S.C. 655 note), 5 U.S.C. 553 and 29 CFR part 1911.

§ 1910.110 [Amended]

2. In § 1910.110(i)(2)(iii) remove the reference to "§ 1910.252" and add, in its place, a reference to "§ 1910.253".

Subpart R—[Amended]

3. The authority citation for subpart R of part 1910 is revised to read as follows:

Authority: Sections 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736) or 1-90 (55 FR 9033), as applicable.

Sections 1910.261, 1910.262, 1910.265, 1910.266, 1910.267, 1910.268 and 1910.269 also issued under 29 CFR part 1911.

Section 1910.272 also issued under 5 U.S.C. 553 and 29 CFR part 1911.

Section 1910.274 and 1910.275 also issued under 29 CFR part 1911.

§ 1910.272 [Amended]

4. In the first sentence of § 1910.272(f)(2), remove the reference to "§ 1910.252(d)" and add, in its place, a reference to "§ 1910.252(a)".

§ 1910.272 Appendix A [Amended]

5. In the first sentence of the second paragraph of section 4. *Hot Work Permit*, of appendix A to § 1910.272, remove the reference to "29 CFR 1910.252(d)" and add, in its place, a reference to "29 CFR 1910.252(a)".

Signed at Washington, DC, this 14th day of June, 1990.

Gerard F. Scannell,
Assistant Secretary of Labor.

[FR Doc. 90-14276 Filed 6-19-90; 8:45 am]

BILLING CODE 4510-26-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[GEN Docket No. 87-389, FCC 90-204]

Operation of Radio Frequency Devices Without an Individual License

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This action responds to a petition for reconsideration of the *First Report and Order* in GEN Docket No. 87-389, 54 FR 17710, April 25, 1989, filed by the Sensormatic Electronics Corporation. The petitioner objects to the Commission's decision to allow new types of devices in the frequency band 902-928 MHz. Because of the potential for interference to its anti-theft field disturbance sensors operating within this band, Sensormatic requests the Commission to permanently preserve the 902-905 MHz band for part 15 devices that were permitted under the former rules or to indefinitely preserve this band but give notice that the Commission plans to revisit this rule in 10 years and may revise it at that time. In response, the Commission is delaying the introduction of new devices operating in the 902-905 MHz band for one additional year.

EFFECTIVE DATE: July 20, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John A. Reed, Office of Engineering and Technology, (202) 653-7313.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum, Opinion and Order* in

Gen Docket No. 87-389, FCC 90-204, adopted May 25, 1990 and released June 12, 1990.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Summary of the Memorandum, Opinion and Order

1. In the *First Report and Order* in this proceeding, the Commission adopted a comprehensive revision of part 15 of its rules governing the operation of radio frequency devices without an individual license. That action encouraged more effective use of the radio frequency (RF) spectrum while providing additional technical and operational flexibility in the design, manufacture and use of non-licensed devices. As part of this action, the Commission permitted any type of device complying with the established technical standards to operate within the band 902-928 MHz. Previously, only certain types of devices were permitted to operate in this frequency band.

2. The Sensormatic Electronics Corporation (Sensormatic) manufactures anti-theft field disturbance sensors that operate under part 15 in the 902-928 MHz band. These sensors transmit radio frequency signals and detect the reflection of those signals from tags attached to clothing or other articles for which theft protection is desired. Sensormatic, in its petition, indicates concern that the new part 15 devices operating in this band will cause interference to its anti-theft systems, rendering them ineffective. Sensormatic states that interference is likely because new devices would be marketed and demonstrated in shopping malls near where its anti-theft systems are used. It adds that such interference could result in a major increase in the number of items stolen, causing increased costs to consumers. Sensormatic indicates that it currently is developing a new digital microwave system that will be capable of changing frequency if interference is detected.

3. To enable it to resolve interference problems that may occur, Sensormatic requests that new types of part 15 device be prohibited from operation within the 902-905 MHz portion of the 902-928 MHz band. Sensormatic requests that we permanently preserve the 902-905 MHz band for part 15

devices permitted under the former rules or indefinitely preserve this band but give notice that we plan to revisit this rule in 10 years and may revise it at that time.

4. Comments in opposition to the Sensormatic petition were filed by several parties. In general, these comments emphasize the Commission's regulations stating that part 15 devices are not provided protection from interference and that persons operating under part 15 have no vested or recognizable right to the continued use of any given frequency. It was also argued that the lower power permitted for new part 15 devices, relative to the power level of the Sensormatic equipment, would cause the new devices to receive interference long before they themselves could cause interference to the Sensormatic receivers. This petition also drew a large number of Congressional inquiries, some of which indicated concern over potential interference to Sensormatic equipment and others of which stated that granting the Sensormatic request would adversely affect the use of the 902-928 MHz band for new technologies and devices.

5. There is little question that, under the proper circumstances, a device operating in the 902-928 MHz band can interfere with the extremely weak signal reflected from a Sensormatic merchandise tag. It is just as predictable, however, that the Sensormatic transmitter, always on and operating at 100 times the power permitted for the new part 15 devices, is also likely to cause interference to the new devices and at greater distances.

6. Sensormatic's request, that the Commission indefinitely prohibit new part 15 devices in the 902-905 MHz

band, does not appear justified. Further, such protection would undermine the basic principles of part 15 operation that part 15 devices must not cause interference and must accept any received interference. We are sensitive, however, to the fact that thousands of Sensormatic systems are installed in stores across the country. Although we believe the interference potential from new part 15 devices will be very slight, we are nonetheless persuaded, out of an abundance of caution, to grant some degree of relief from the immediate implementation of the new rules.

7. We note that Sensormatic indicates that its new system will be available in one to two years. We do not, however, wish to delay the development of new technology and consumer devices for an unnecessarily long period. Thus, we believe that, on balance, the public interest would best be served by delaying the introduction of new devices in the 902-905 MHz band for one year. Combined with the one year since these rules were adopted, Sensormatic will have had adequate opportunity to develop its new equipment.

8. In accordance with the above discussion and pursuant to the authority contained in sections 4(i), 301, 302, and 303 of the Communications Act of 1934, as amended, it is ordered That the Petition for Reconsideration filed by Sensormatic Electronics Corporation is granted to the extent indicated herein and in all other respects is denied. In addition, it is ordered that part 15 of the Commission's Rules and Regulations is amended as set forth below. These rules and regulations are effective upon 30 days from the date of publication in the Federal Register.

List of Subjects in 47 CFR Part 15

Communications equipment, Radio.

Rule Changes

Title 47 of the Code of Federal Regulations, part 15 is amended as follows:

PART 15—[AMENDED]

1. The authority citation for part 15 continues to read as follows:

Authority: Secs. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303, 304, and 307.

2. Section 15.37 is amended by adding a new paragraph (d), to read as follows:

§ 15.37 Transition provisions for compliance with the rules.

* * * * *

(d) Prior to May 25, 1991, person shall import, market or operate intentional radiators within the band 902-905 MHz under the provisions of § 15.249. Until that date, the Commission will not issue a grant of equipment authorization for equipment operating under § 15.249 if the equipment is designed to permit operation within the band 902-905 MHz.

3. Section 15.249 is amended by adding a new paragraph (e), to read as follows:

§ 15.249 Operation within the bands 902-928 MHz, 2400-2483.5 MHz, 5725-5875 MHz, and 24.0-24.25 GHz.

* * * * *

(e) Parties considering the manufacture, importation, marketing or operation of equipment under this section should also note the requirement in § 15.37(d).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-14278 Filed 6-19-90; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register

Vol. 55, No. 119

Wednesday, June 20, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization Conservation Service

Farm Marketing Quotas, Acreage Allotments, and Production Adjustment; Tobacco

7 CFR Parts 723, 724, 725 and 726

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations at 7 CFR parts 723, 724, 725, and 726 which implement the tobacco marketing quota and acreage allotment programs authorized by the Agricultural Adjustment Act of 1938, as amended (the 1938 Act). This proposed rule would remove parts 724, 725, and 726; and would revise part 723 to consolidate current parts 723, 724, 725, and 726. This proposed rule would also delete obsolete and unnecessary provisions. Also, producers of Puerto Rico (type 46) tobacco recently approved marketing quotas for the 1989-1991 crops of tobacco. Thus, this proposed rule would also amend the tobacco marketing quota regulations to include type 46 tobacco. No substantive changes to current regulations are included in this proposed rule.

DATES: Comments must be received on or before July 20, 1990 in order to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments to: Director, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, D.C. 20013. Written comments must be received by July 20, 1990 to be assured consideration. All written submissions made pursuant to this notice will be made available for public inspection in room 5750-South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dennis R. Daniels, Agricultural Program

Specialist, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC, 20013, telephone (202) 447-4281.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512-1 and has been classified as "not major."

It has been determined that this rule will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises, to compete with foreign-based enterprises in domestic or export markets.

Information collection requirements contained in this regulation have been approved by OMB under the provisions of 44 USC, chapter 35 and have been assigned OMB #0560-0058 and #0560-0006.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The regulations in 7 CFR parts 723 through 726 set forth the provisions of the tobacco marketing quota and acreage allotment programs. Part 723 is currently applicable to Cigar-filler (type

41) and Maryland (type 32) tobacco. Part 724 is currently applicable to Fire-cured, Dark air-cured, Virginia sun cured, Cigar-binder (types 51 and 52), Cigar-filler and binder (types 42, 43, 44, 54, and 55) tobacco. Part 725 is currently applicable to Flue cured tobacco and part 726 is currently applicable to Burley tobacco. This proposed rule would revise part 723 and would remove all references to Cigar-binder (types 51 and 52) tobacco in part 724 since marketing quotas are not currently in effect with respect to these kinds of tobacco.

With respect to parts 724, 725, and 726 numerous provisions are identical; accordingly, it has been determined that it would be more efficient to include all tobacco marketing quota and acreage allotment regulations in one part. This consolidation would also result in greater program uniformity and ease in administration. This action would not result in the imposition of additional regulatory provisions. However, obsolete regulations would be deleted under the proposed rule and would not be included in this proposed regulation part 723. This proposed action would result in reduced paperwork and recordkeeping by producers and tobacco industry entities. Although this proposed rule would not impose additional restrictions, comments are requested with respect to proposed provisions of part 723 which the public believes would be unnecessary or which are unclear.

Lists of Subjects in 7 CFR Part 723

Acreage allotments, Marketing quotas, Reporting and recordkeeping requirements, Tobacco.

Proposed Rule

PART 723 [REVISED]

Accordingly, parts 724, 725, and 726 would be removed and the present Part 723 would be revised to read as follows:

PART 723—TOBACCO

Subpart A—General Provisions

- | | |
|---------|--|
| Sec. | |
| 723.101 | OMB control numbers assigned pursuant to the Paperwork Reduction Act. |
| 723.102 | Applicability. |
| 723.103 | Administration. |
| 723.104 | Definitions. |
| 723.105 | Extent of determinations, computations, and rule for rounding fractions. |

Sec.

723.106 Location of farm for administrative purposes.

Subpart B—Allotments, Quotas, Yields, Transfers, Release and Reapportionment, History Acreages, and Forfeitures

723.201 Determination of preliminary farm acreage allotments and preliminary farm marketing quotas.

723.202 Determining farm acreage allotments except for flue-cured tobacco.

723.203 Determination of flue-cured tobacco preliminary farm yields.

723.204 Determination of farm yields and normal yields.

723.205 Determination of farm acreage allotments and effective farm acreage allotments for flue-cured tobacco.

723.206 Determining farm marketing quotas and effective farm marketing quotas.

723.207 Determination of acreage allotments or burley marketing quotas for new farms.

723.208 Determination of acreage allotments, marketing quotas, and yields for divided farms.

723.209 Determination of acreage allotments, marketing quotas, and yields for combined farms.

723.210 Corrections of errors and adjusting inequities in acreage allotments and marketing quotas for old farms.

723.211 Allotments, quotas, and yields for farms acquired under right of eminent domain.

723.212 Time for making reduction of farm marketing quotas or acreage allotments for violation of the marketing quota or acreage allotment regulations for a prior marketing year.

723.213 Approval of acreage allotments and marketing quotas and notices to farm operators.

723.214 Application for review.

723.215 Transfer of tobacco farm acreage allotment or farm marketing quota that cannot be planted or replanted due to a natural disaster.

723.216 Transfer of tobacco acreage allotment or marketing quota by sale, lease, or owner.

723.217 Release and reapportionment of old farm acreage allotments for Cigar-filler and Binder (types 42, 43, 44, 54, and 55) tobacco.

723.218 Determining tobacco history acreage.

723.219 Forfeiture of burley tobacco marketing quota.

723.220 Forfeiture of flue-cured tobacco acreage allotment and marketing quota.

Subpart C—Tobacco subject to quota, exemptions from quotas marketing cards, and general penalty provisions

723.301 Identification of tobacco subject to quota.

723.302 Tobacco for experimental purposes.

723.303 Production of registered or certified flue-cured tobacco seed.

723.304 Determination of discount varieties.

723.305 Issuance of marketing cards.

723.306 Claim stamping and replacing marketing cards.

723.307 Invalid cards.

723.308 Rate of penalty.

723.309 Persons to pay penalty.

723.310 Date penalty is due.

723.311 Lien for penalty.

723.312 Request for refund of penalty.

723.313 Identification of marketings.

Subpart D—Recordkeeping, reporting requirements, marketing penalties, and other penalties.

723.401 Registration of burley or flue-cured warehouse operators or dealers.

723.402 Warehouse authorized to retain producer marketing cards between sales.

723.403 Auction Warehouse operators' records and reports.

723.404 Dealer's records and reports, excluding cigar tobacco buyers.

723.405 Dealers exempt from regular records and reports on MO-79; and season report for dealers.

723.406 Provisions applicable to damaged tobacco or to purchases of tobacco from processors or manufacturers.

723.407 Cigar tobacco buyer's records and reports.

723.408 Producer's records and reports.

723.409 Producer penalties; false identification and related issues.

723.410 Penalties considered to be due from a warehouse operator, dealers, buyers, and others excluding the producer.

723.411 Records and reports regarding hauling, processing, and storage of tobacco.

723.412 Separate records and reports from persons engaged in tobacco related businesses.

723.413 Length of time records and reports are to be kept.

723.414 Failure to keep records and make reports or making false report or record.

723.415 Examination of records and reports.

723.416 Information confidential.

Authority: 7 U.S.C. 1301, 1313, 1314, 1314-1, 1314b, 1314b-1, 1314c, 1363, 1372-75, 1377, 1378 and 1421, Pub. L. 100-387.

Subpart A—General Provisions**§ 723.101 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

The information collection requirements contained in these regulations (7 CFR part 723) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of U.S.C. chapter 35 and have been assigned OMB control numbers 0560-0058 and 0560-0006.

§ 723.102 Applicability.

The regulations contained in this subpart are applicable to the 1990 and subsequent crops of burley; flue-cured; fire-cured; dark air-cured; Virginia sun-cured; cigar-filler and binder (types 42, 43, 44, 54, and 55); and Cigar filler (type 46) tobacco. These regulations govern the establishment of farm marketing quotas and acreage allotments, the issuance of marketing cards, the

identification of marketings of tobacco, the collection and refund of penalties and the keeping of records and making of reports. All of the provisions of these regulations apply to each kind of tobacco for which marketing quotas are in effect unless the wording of the text indicates otherwise.

§ 723.103 Administration.

(a) The regulations in this part will be administered under the general supervision of the Administrator, Agricultural Stabilization and Conservation Service ("ASCS") and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees ("State and county ASC committees").

(b) State and county ASC committees, and representatives and employees thereof do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State ASC committee shall take any action required by these regulations which has not been taken by the county ASC committee. The State ASC committee shall also:

(1) Correct, or require a county ASC committee to correct any action taken by such county ASC committee which is not in accordance with the regulations of this part, or

(2) Require a county ASC committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county ASC committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the regulations of this part or from reversing or modifying any determination made by a State or county ASC committee.

(e) To the extent that discretionary authority is not prohibited by statute, the Deputy Administrator—State and County Operations, ASCS ("Deputy Administrator"), may authorize State and county ASC committees to waive or modify deadlines and other requirements of these regulations in order to prevent undue hardship if the Deputy Administrator determines that such action will not affect adversely the operation of the tobacco price support and production adjustment program.

§ 723.104 Definitions.

(a) *Applicability.* The definitions set forth in this section shall be applicable for all purposes of program administration for all kinds of tobacco except as may otherwise be indicated. The definitions in and provisions of parts 718, 719 and 720 of this chapter are

hereby incorporated by reference in these regulations unless the context or subject matter or the provisions of these regulations require otherwise.

(b) *Terms.* The following terms shall be defined as set forth in this paragraph.

Act. The Agricultural Adjustment Act of 1938, as amended.

Active burley tobacco producer. Any person who intends to be a burley tobacco producer in the current year by sharing in the risk of producing the crop and who provides a certification of such intention on a form provided by the Deputy Administrator.

Active flue-cured tobacco producer—
(1) Any person who shared in the risk of producing a crop of flue-cured tobacco in at least one of the three years preceding the current year, or

(2) Any person who intends to become a flue-cured tobacco producer in the current year by sharing in the risk of producing the crop and who provides a certification of such intention on a form approved by the Deputy Administrator.

Allowable floor sweepings. The quantity of floor sweepings determined by multiplying 0.0024 times the total producer first sales of the respective kind of tobacco at auction for the season for the warehouse involved.

Auction sale. A marketing of tobacco by a sale at public auction through a warehouse in the regular course of business including sale of all lots of tobacco at public auction in sequence at a given time.

Base Period. The 5 calendar years immediately preceding the year for which farm acreage allotments or marketing quotas are currently being established.

Buyer. A person who engages to any extent in acquiring or marketing tobacco in the form normally marketed by producers.

Buyers corrections account. The warehouse account of tobacco purchased at auction by the buyer but not delivered to the buyer, or any tobacco returned by the buyer, lost ticket, or any other valid reason, which is turned back to the warehouse operator and supported by an adjustment invoice from the buyer. This account shall include the pounds deducted resulting from returned lots, short lots, and short weights, and pounds added resulting from long lots and long weights, which buyers debit or credit to the warehouse operator and support with adjustment invoices.

Carryover tobacco. Tobacco produced prior to the current calendar year which has not been marketed or otherwise disposed of prior to the beginning of the marketing year for the current crop.

Considered planted acreage. An acreage that is used for determining an old farm's history acreage for a kind of tobacco when the acreage planted on the farm to the kind of tobacco in the current year is less than the farm acreage allotment established for such farm in the current year. With respect to:

(1) *Flue-cured tobacco.* If flue-cured tobacco was marketed from the farm during the current year, the considered planted acreage is an acreage determined by subtracting the planted acres from the farm acreage allotment. If flue-cured tobacco was not marketed from the farm in the current year, the considered planted acreage is an acreage, not to exceed the farm's acreage allotment, that is equal to the sum of the acreage:

(i) That could not be planted to flue-cured tobacco because of a natural disaster,

(ii) Computed for pounds leased from the farm,

(iii) In the eminent domain pool,

(iv) Reduced for overmarketing,

(v) Reduced for violation of marketing quota regulations, and

(vi) Converted from the production of flue-cured tobacco during the respective crop year in accordance with part 704 of this title.

(2) *A kind of tobacco other than burley or flue-cured tobacco.* The considered planted acreage for a farm is an acreage, not to exceed the farm's acreage allotment, that is equal to the sum of the acreage:

(i) That could not be planted to the kind of tobacco because of a natural disaster.

(ii) Temporarily transferred from the farm.

(iii) Temporarily released.

(iv) Converted from production of the kind of tobacco in accordance with part 704 of this title.

(v) In the eminent domain pool.
(vi) Reduced for violation of the regulations set forth in this part.

Container. A package in which tobacco is marketed, packed, and stored.

Current crop. The crop planted in the current year.

Current year. The calendar year for which acreage allotments are being established, or tobacco history acreage and yields are being determined, or the farm is being considered under the provisions of the marketing quota program.

Dealer. A person who engages to any extent in acquiring or marketing tobacco in the form normally marketed by producers.

Director. The Director, or Acting Director, Tobacco and Peanuts Division,

Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

Effective farm acreage allotment. The effective farm acreage allotment for flue-cured tobacco is the allotment determined under § 723.205 of this part.

Effective farm marketing quota. The effective farm marketing quota is the current year farm marketing quota plus or minus any temporary quota adjustments.

Excess tobacco for a farm—(1) *For burley and flue-cured tobacco.* The quantity of tobacco marketed above 103 percent of the effective farm marketing quota.

(2) For kinds of tobacco other than burley or flue-cured. That quantity of tobacco which is equal to the average yield per acre of the entire acreage of tobacco harvested on the farm times the number of acres harvested in excess of the farm acreage allotment, plus any carryover excess tobacco.

Experimental tobacco. Tobacco grown by or under the direction of a publicly owned agricultural experiment station for experimental purposes only.

False Identification. False identification occurs if:

(1) Tobacco was marketed or was permitted to be marketed in any marketing year as having been produced on any farm when, in fact, it was produced on another farm; or

(2) Tobacco was marketed or was permitted to be marketed in any marketing year from a farm and was not identified by a tobacco marketing card for the farm; or

(3) The farm operator or any other producer on a farm permits the use of the tobacco marketing card for the farm to record a marketing of tobacco when, in fact, no tobacco was marketed from the farm.

(4) A tobacco marketing card issued to market a kind of tobacco is used to market another kind of tobacco produced on the same farm.

Family farm corporation. A corporation for which:

(1) Not less than 50 percent of the stock is owned by:

(i) An individual or;

(ii) An individual in combination with:

(A) The spouse of such individual; or

(B) The parent, aunt, uncle, child, grandchild, or cousin of such individual; or

(C) A spouse of any individual specified in paragraph (1)(ii)(B) and;

(2) One or more of the individuals specified in paragraph (1) participates in the direct management of the day to day operations of the corporation.

Farm acreage allotment. For flue-cured tobacco, the allotment established in accordance with § 723.205 of this chapter.

Farm marketing quota—(1) For burley tobacco, old farms. The pounds determined by multiplying the preliminary farm marketing quota by the national factor and adjusting the result for any permanent quota adjustment.

(2) For burley tobacco, new farms. The pounds for the farm determined by the county ASC committee with the approval of the State ASC committee.

(3) For flue-cured tobacco. The pounds determined by multiplying the farm acreage allotment by the farm yield.

(4) For kinds of tobacco other than burley or flue-cured. The actual production of tobacco on the farm acreage allotment, which shall be the average yield per acre for the entire acreage of tobacco harvested on the farm times the farm acreage allotment.

Farm yield. The yield determined as provided in § 723.204 of this part.

Floor sweepings. The scraps or leaves of tobacco which accumulate on the warehouse floor in the regular course of business.

Green weight. The weight of tobacco which is in the form normally marketed by farmers prior to being redried, or processed.

Leaf account tobacco. The quantity of tobacco purchased or otherwise acquired by or for the account of a warehouse operator, including floor sweepings purchased from another warehouse operator or dealer, as adjusted by the debits and credits to the buyers correction account. Such quantity shall not include tobacco in the form not normally marketed by producers, including tobacco pickings, and floor sweepings which accumulate on the warehouse floor.

Market. The disposition of tobacco in raw or processed form by voluntary or involuntary sale, barter, or exchange, or by gift between living persons. "Marketing" and "marketed" shall have corresponding meaning to the term "market."

Marketing recorder. Any employee of the U.S. Department of Agriculture, or any employee of an Agricultural Stabilization and Conservation Service county (ASCS) office, whose duties involve the preparation and handling of the records and reports pertaining to the identification of marketing of tobacco.

Marketing year. (1) For flue-cured tobacco, the period beginning July 1 of the current year and ending June 30 of the following year.

(2) For kinds of tobacco other than burley or flue cured. The period

beginning October 1 of the current year and ending September 30 of the following year.

New farm. A farm for which an acreage allotment or marketing quota is established for the current year from the national reserve that is set aside for such purpose from the national acreage allotment or marketing quota established for the kind of tobacco.

Nonauction sale. Any first marketing of tobacco other than by a sale at auction.

Old farm.—(1) For burley tobacco. A farm which had burley tobacco planted or considered planted in one or more years of the base period.

(2) For of tobacco other than burley. A farm on which there is tobacco history acreage in one or more years of the base period.

Overmarketings. The pounds by which the pounds marketed exceed the effective farm marketing quota.

Planted or considered planted credit. For burley tobacco, credit that is assigned in the current year for a farm with an established farm marketing quota when:

(1) Burley tobacco is planted on the farm.

(2) Quota is:

(i) Leased and transferred from the farm, or

(ii) In the eminent domain pool.

(3) A restrictive lease on federally owned land is in effect prohibiting tobacco production.

(4) Effective quota is zero because of overmarketings or a violation of regulations, or

(5) Acreage is converted from production of burley tobacco in accordance with part 704 of this title.

Pound. The amount of tobacco which, if weighed in its unstemmed form and in the condition in which it is normally marketed by a producer, would equal 1 pound standard weight.

Preceding year. The calendar year immediately preceding the year for which the allotments and quotas are established, or the marketing year preceding the marketing year for which the allotments and quotas are established.

Preliminary farm marketing quota. For burley tobacco, the farm marketing quota for the preceding year.

Preliminary farm yield. For flue-cured tobacco, the yield determined for a farm as provided in § 723.203 of this part.

Processed, Processing. A method of preparing green weight tobacco for storage in which the tobacco may be redried, stemmed, tipped or threshed and the resulting product packed in a container.

Production record. A record prepared by a processor to account for the processing of tobacco.

Quota adjustments. For burley tobacco:

(1) **Temporary.** Adjustments for:

(i) Effective undermarketings,

(ii) Overmarketings from any prior year,

(iii) Reapportioned quota from quota released from farms in the eminent domain pool,

(iv) Quota transferred by lease or by owner,

(v) Pounds in violation of the regulations for a prior year, and

(vi) Pounds reduced from the burley tobacco quota during the current year in accordance with part 704 of this title.

(2) **Permanent.** Adjustments for:

(i) Old farm adjustment from reserve,

(ii) Pounds of quota transferred to the farm from the eminent domain pool,

(iii) Pounds of quota transferred to or from the farm by sale,

(iv) Pounds of quota transferred to the farm from the forfeiture pool, or

(v) Pounds of forfeited quota.

Resale. The disposition by sale, barter, exchange, or gift between living persons, of tobacco which has been marketed previously.

Sale. The first marketing of tobacco on which the gross amount of the sale price therefor has been or could be readily determined.

Sale date. The date on which the gross amount of the sale price of tobacco is determined.

Sale day. The period at the end of which the warehouse operator bills to buyers the tobacco purchased by them during such period.

Scrap tobacco. The residue which accumulates in the course of preparing tobacco for market, consisting chiefly of portions of tobacco leaves and leaves of poor quality.

Shared in the risk of production. For burley or flue-cured tobacco, involvement in the production of the respective kind of tobacco by a person who:

(1) Invests in the production of a crop of the respective kind of tobacco in an amount which is not less than 20 percent of the proceeds of the sale of the crop;

(2) Depends solely on a share of the proceeds from the marketing of the tobacco for the return on the investment;

(3) Waits until such crop of tobacco is marketed to receive any return on the investment; and

(4) Maintains records, for a period of 3 years after the end of the marketing year in which the tobacco is sold, which may be used to verify that the provisions of this definition have been met.

Strip, scrap, stem. Types of products resulting from processing of tobacco.

Suspended sale. Any marketing of tobacco at auction for which the sale is not identified by a producer marketing card or a dealer's identification card by the end of the sale day on which such marketing occurred.

Tillable cropland. With respect to flue-cured tobacco only, cropland (excluding orchards, vineyards, land devoted to trees, and land being prepared for non-agricultural uses) which the county ASC committee determines can be planted to crops without unusual preparation or cultivation.

Tobacco. Kinds of tobacco that are subject to marketing quotas as follows: Burley tobacco, (type 31); Flue-cured tobacco, (types 11, 12, 13, and 14); Fire-cured tobacco (types 21, 22, and 23); Dark air-cured tobacco (types 35 and 36); Virginia sun-cured tobacco (type 37); Cigar filler (type 46); and Cigar filler and binder tobacco (types 42, 43, 44, 54, and 55) as classified by the Agricultural Marketing Service at Part 30 of this title.

Tobacco available for marketing. All tobacco produced on a farm which has not been marketed and which has not been disposed of so that it cannot be marketed.

Tobacco in the form not normally marketed by producers. Tobacco leaves, stems, strips, scrap or parts thereof that are the result of green tobacco having been redried, stemmed, tipped, threshed or otherwise processed.

Tobacco pickings. The residue which accumulates in the course of processing tobacco prior to the redrying of such tobacco, consisting of scrap, stems, portions of leaves, and leaves of poor quality shall be considered to be tobacco in the form not normally marketed by producers.

Trucker. A person who trucks, or who otherwise hauls tobacco for a producer, or for any other person.

Undermarketings. For burley or flue-cured tobacco, the actual undermarketings are the pounds by which the effective farm marketing quota is more than the pounds of the respective kind of tobacco marketed, and the effective undermarketings are the smaller of actual undermarketings or the sum of the previous year's farm marketing quota plus pounds of quota temporarily transferred to the farm for the previous year. However, with respect to the 1989 crop, actual undermarketings are the number of pounds by which the effective farm marketing quota is more than the sum of the number of pounds of tobacco marketed and number of pounds for which a disaster payment was made on

the 1989 crop of tobacco under part 1477 of this title.

Warehouse operator. A person who engages in the business of holding sales of tobacco at public auction.

§ 723.105 Extent of determinations, computations, and rule for rounding fractions.

(a) **General.** All rounding herein shall be in accordance with the provisions of part 793 of this chapter.

(b) **Allotments.** Farm acreage allotments shall be determined in hundredths of acres.

(c) **Percent excess.** The percentage of excess tobacco available for marketing from a farm, hereinafter referred to as the "percent excess," shall be determined in tenths of a percent.

(d) **Converted rate of penalty.** For tobacco other than burley or flue-cured, the amount of penalty per pound upon marketings of tobacco subject to penalty, hereinafter referred to as the "converted rate of penalty," shall be determined in tenths of a cent.

(e) **Percentage reduction for violation.** A percentage of reduction in an allotment due to a violation shall be determined in tenths of a percent.

(f) **Yields and quotas.** Yields and quotas shall be determined in whole pounds.

§ 723.106 Location of farm for administrative purposes.

The location of a farm in a county for administrative purposes shall be as provided in part 719 of this chapter.

Subpart B—Allotments, Quotas, Yields, Transfers, Release and Reapportionment, History/Acreages, and Forfeitures

§ 723.201 Determination of preliminary farm acreage allotments and preliminary farm marketing quotas.

(a) **Flue-cured tobacco.** A preliminary farm acreage allotment shall be determined for the current year for each farm which has flue-cured tobacco history acreage for the base period. The preliminary farm acreage allotment shall be the same as the farm acreage allotment established for the preceding year.

(b) **Burley tobacco.** The preceding year's farm marketing quota shall be the current year's preliminary farm marketing quota for each old farm except that the preliminary farm marketing quota shall be zero if:

(1) The farm or all of cropland has gone out of agricultural production and eminent domain procedure of part 719 of this chapter does not apply.

(2) Quota that was pooled under the provisions of part 719 of this chapter has been canceled.

Tobacco Acreage Allotment and Marketing Quota Regulations 32

(3) A new farm quota that was established in a prior year is canceled.

(c) **Kinds of tobacco other than flue-cured and burley.** A preliminary farm acreage allotment shall be determined for each farm which has tobacco history acreage, as established under paragraph § 723.218 of this part in the base period. If the history acreage for the previous year is the same as the basic allotment, the preliminary allotment shall be the same as the previous year's basic allotment. Otherwise, the preliminary allotment shall be the simple average of the sum of the basic allotment and history acreage for the preceding year.

§ 723.202 Determining farm acreage allotment, except for flue-cured tobacco.

With respect to each kind of tobacco, the preliminary allotments determined for all old farms shall be adjusted uniformly so that the total of such allotments for old farms plus the reserve acreage available for establishing new farm allotments, adjusting inequities in acreage allotments for old farms, and for correcting errors in old farm allotments shall not exceed the national acreage allotment established for such kind of tobacco.

§ 723.203 Determination of flue-cured tobacco preliminary farm yields.

(a) **Old farms.** The preliminary farm yield for a flue-cured tobacco old farm for the current year shall be determined as follows:

(1) **Farm having preliminary farm acreage allotment.** The preliminary farm yield established for the farm shall be the same preliminary farm yield as was in effect for the preceding year.

(2) **Farm not having preliminary farm acreage allotment.** The preliminary farm yield shall be determined by dividing the farm yield by the national yield factor.

(b) **New Farms.** The preliminary farm yield for a new farm shall be determined by dividing the farm yield determined in accordance with § 723.204 of this part for such farm by the national yield factor applicable for the year in which the new farm allotment was established.

§ 723.204 Determination of farm yields and normal yields.

(a) **Flue-cured tobacco.** The farm yield for an old farm shall be determined by multiplying the preliminary farm yield, if the farm has such a yield, by the national yield factor for the current year. The farm yield for new farms and old

farms that do not have a preliminary yield shall be that yield, which the county ASC committee determines for the farm taking into consideration:

(1) The soil and other physical factors affecting the production of tobacco on the farm, and

(2) The farm yields determined for other farms on which the soil and other physical factors affecting the production of tobacco are similar. Tobacco Acreage Allotment and Marketing Quota Regulations 34

(b) *Burley tobacco.* The farm yield for a farm on which a farm yield has been established shall be the same in the current year as the farm yield previously established for the farm. For any farm not having a previously established yield, the county ASC committee shall establish a yield based on similar farms having a farm yield; however, such yield shall not exceed 3500 pounds.

(c) *All kinds of tobacco except burley.* The normal yield for a farm shall be that yield which the county ASC committee determines is normal for the farm taking into consideration the yields obtained on the farm during any of the years of the base period for which data are available, the soil and other physical factors affecting the production of tobacco on the farm, and the yields obtained on other farms in the locality which are similar with respect to such factors. The normal yield first determined for a farm for any year in accordance with the foregoing provision shall serve as the normal yield for the farm for all purposes in connection with the tobacco marketing program for the year for which such normal yield is determined.

§ 723.205 Determination of farm acreage allotments and effective farm acreage allotments for flue-cured tobacco.

(a) *Farm acreage allotments.* The farm acreage allotment shall be determined by multiplying the national acreage factor as determined by the Secretary for the current year by the preliminary farm acreage allotment for the current year and adjusting the result by:

(1) *Upward adjustment.* Adding the:

(i) Acreage approved in accordance with the provisions of § 723.210 of this part in order to adjust for an inequity or to correct an error;

(ii) Acreage determined by dividing the pounds of quota which are purchased in the current year by the farm yield; and

(iii) Acreage determined by dividing the pounds of forfeited quota which are approved for adjustment from the forfeiture pool by the farm yield.

(2) *Downward Adjustment.* Subtracting the:

(i) Acreage determined by dividing the pounds of quota sold in the current year by the farm yield; and

(ii) Acreage of forfeited allotment.

(b) *Effective farm acreage allotment.* The effective farm acreage allotment for the current year shall be determined by dividing by the effective farm marketing quota by the farm yield.

§ 723.206 Determining farm marketing quotas and effective farm marketing quotas.

(a) *Burley tobacco.* The burley farm marketing quota shall be determined by multiplying the national factor as determined by the Secretary for the current year by the preliminary farm marketing quota for the current year and adjusting the result for permanent quota adjustments.

(b) *Flue-cured tobacco.* The flue-cured farm marketing quota shall be determined by multiplying the farm acreage allotment by the farm yield.

(c) *Burley or flue-cured tobacco.* The effective farm marketing quota shall be the farm marketing quota adjusted by:

(1) *Upward adjustments.* Adding the:

(i) Effective undermarketings from the preceding marketing year,

(ii) The pounds of quota which are temporarily transferred to the farm in the current year.

(2) *Downward adjustments.*

Subtracting the pounds of quota that are:

(i) Overmarketed from the preceding marketing year,

(ii) Overmarketed from any year before the preceding year but have not been subtracted when determining the effective farm marketing quota in a prior year.

(iii) Temporarily transferred from the farm in the current year.

(iv) Reduced in the current year as a result of a violation in a prior year as provided for in § 723.408 of this part.

(vi) Determined, for flue-cured tobacco only, by multiplying the farm yield by the acres reduced from the flue-cured tobacco acreage allotment during the current year in accordance with part 704 of this title.

(vii) For burley tobacco only, designated for reduction under a Conservation Reserve Program contract in accordance with part 704 of this title.

§ 723.207 Determination of acreage allotments or burley marketing quotas for new farms.

(a)(1) *All kinds of tobacco.* The acreage allotment or burley marketing quota established in any crop year for all new farms shall not exceed the national acreage or poundage, as applicable, reserved for new farms for

the respective kind of tobacco. The acreage allotment or burley marketing quota for a new farm shall be that acreage or burley marketing quota which the county ASC committee, with the approval of the State ASC committee, determines is fair and reasonable for the farm, taking into consideration the past tobacco experience of the farm operator; the land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco. Such acreage allotments or burley marketing quota shall not exceed 50 percent (75 percent for Cigar-filler and Binder tobacco) of the average of the applicable acreage allotments or burley marketing quotas established for two or more but not more than five old farms which are similar with respect to land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco; and with respect to flue-cured tobacco acreage allotments, shall not exceed one acre.

(2) *Kinds of tobacco, except burley and flue-cured.* If the acreage planted to tobacco on a new tobacco farm is less than 75 percent of the tobacco acreage allotment otherwise established for the farm pursuant to this section, such allotment shall be automatically reduced to the sum of the tobacco planted acreage and the prevented planted tobacco acreage as determined under Part 718 of this chapter for the farm.

(b)(1) *Written application.* The farm operator must file an application for a new farm acreage allotment or marketing quota at the office of the county ASC committee where the farm is administratively located on or before February 15 of the year for which the new farm acreage allotment or marketing quota is requested.

(2) *Operator requirements.* The operator requesting a new farm acreage allotment or marketing quota must be the sole owner of the farm, except for Cigar-filler and Binder tobacco, the operator need not own the farm. The farm operator shall not own or have an ownership interest in or operate any other farm in the United States for which a tobacco allotment or quota for any kind of tobacco is established for the current year.

(3) *Availability of equipment and facilities.* The operator must own, or have readily available, adequate equipment and any other facilities of production necessary to the production of tobacco on the farm.

(4)(i) *Income from farming.* The operator must expect to obtain during the current year more than 50 percent of the producer's income from the production of agricultural commodities or products. The following shall be considered in computing the operator's income:

(A) *Farm income.* Income from farming shall include the estimated return from home gardens, livestock and livestock products, poultry, or other agricultural products produced for home consumption or other use on the farm(s). The estimated return from the production of the requested new farm allotment or quota shall not be included.

(B) *Non-farm income.* Non-farming income shall include, but not limited to salaries, commissions, pensions, social security payments, and unemployment compensation.

(C) *Spousal income.* The spouse's farm and non-farm income shall be included in the computation.

(ii) *Operator a partnership.* If the operator is a partnership, each partner must expect to obtain more than 50 percent of their current year income from farming.

(iii) *Operator a corporation.* If the operator is a corporation, it must have no other major corporate purpose other than ownership or operation of the farm(s). Farming must provide its officers and general manager with more than 50 percent of their expected income. Salaries and dividends from the corporation shall be considered as income from farming.

(iv) *Special provisions for low-income farmers.* The county ASC committee may waive the income provisions in this section provided they determine that the farm operator's income, from both farm and non-farm sources is so low that it will not provide a reasonable standard of living for the operator and the operator's family, and a State ASC committee representative approves such action. In making their determination, the county ASC committee shall consider such factors as size and type of farming operations, estimated net worth, estimated gross family income, estimated family off-farm income, number of dependents, and other factors affecting the individual's ability to provide a reasonable standard of living.

(5) *Experience.* The operator must have had experience in producing, harvesting, and marketing the kind of tobacco requested. Such experience must have been gained by being a sharecropper, tenant, or farm operator (bona fide tobacco production experience gained by a person as a member of a partnership shall be accepted as experience gained in

meeting this requirement) during at least 2 of the 5 years immediately preceding the year for which the new farm allotment is requested. The experience must have been gained on a farm having a tobacco allotment for such years for the kind of tobacco requested in the application. However, for Cigar-filler and binder tobacco only, the operator must have experience in any prior year in the production of tobacco as a farm owner, farm operator, sharecropper, tenant, warehouse operator, or laborer on a farm which produced Cigar-filler and binder tobacco.

(6) *Operator has not sold or forfeited allotment.* For flue-cured tobacco only, during the current or the 4 preceding years, the operator must not have sold or forfeited any flue-cured tobacco allotment from any farm.

(c) *Eligibility requirements for the farm.* A new farm acreage allotment or marketing quota may be established if each of the following conditions is met:

(1) *Current allotment or quota.* The farm must not have on the date of approval of a new farm acreage allotment, an allotment or quota for any kind of tobacco.

(2) *Availability of land, type of soil, and topography.* The available land, type of soil, and topography of the land on the farm must be suitable for tobacco production. Also, continuous production of tobacco must not result in an undue erosion hazard.

(3) *Eminent domain acquisition.* A farm which includes land acquired by an agency having the right of eminent domain for which the entire tobacco allotment was pooled pursuant to part 719 of this chapter, which is subsequently returned to agricultural production shall not be eligible for a new farm allotment or marketing quota for a period of 5 years from the date the former owner was displaced.

(4) *Farm includes land previously having a tobacco acreage allotment.* A farm which includes land which has no tobacco allotment because the owner did not designate an allotment for such land when the parent farm was reconstituted pursuant to part 719 of this chapter shall not be eligible for a new farm acreage allotment for a period of 5 years beginning with the year in which the reconstitution became effective.

(5) *Entire quota sold.* A new farm tobacco acreage allotment may not be established for a farm if, during the current year or the 4 preceding years, the farm was constituted as any part of a farm for which an acreage allotment or marketing quota had been established and for which the current or a former owner sold or permanently transferred

all of the tobacco acreage allotment or marketing quota.

(d) *False information.* Any new farm acreage allotment or marketing quota which was determined by the county ASC committee on the basis of incomplete or inaccurate information knowingly furnished by the applicant, shall be canceled by the county ASC committee as of the date the allotment or quota was established. When incomplete or inaccurate information was unknowingly furnished by the applicant, the allotment or quota shall be canceled effective for the current crop year.

(e) *Failure to plant.* A new farm acreage allotment or marketing quota shall be reduced to zero if no tobacco is planted on the farm the first year.

§ 723.208 Determination of acreage allotments, marketing quotas, and yields for divided farms.

(a) *Flue-cured tobacco.* The farm acreage allotment for the divided farm shall be divided pursuant to the provisions of part 719 of this chapter. History acreages and other basic data shall be apportioned among the divided tracts as provided in part 719 of this chapter.

(b) *Burley tobacco.* The farm marketing quota for the divided farm shall be divided pursuant to the provisions of part 719 of this chapter. Other basic data shall be apportioned among the divided tracts the same as the farm marketing quota.

(c) *Burley and flue-cured tobacco.*—
(1) *Tract yield.* The tract yield for the tracts divided from a parent farm shall be the same as the tract yield established for the tracts before the division of the parent farm. If a tract is divided, the tract yields for the resulting tracts shall be the same as the tract yield established for the tract before it was divided.

(2) *Single tract farm.* If a tract that is divided from a parent farm becomes a single tract farm, the tract yield shall become the preliminary farm yield and the farm yield for the farm shall be determined by multiplying the preliminary farm yield by the national yield factor for the current year.

(3) *Carryover tobacco.* Where carryover tobacco produced on a parent farm is marketed after the effective date of a reconstitution, such marketings shall be charged to the divided tracts in the same ratio as the marketing quotas are established for the divided tracts or as the county ASC committee determines that:

(1) The proceeds from such marketings are received by the owner or

operator of one or more of the divided tracts, or

(2) The owners of the divided tracts agree.

§ 723.209 Determination of acreage allotments, marketing quotas, and yields for combined farms.

(a) *Burley tobacco.* The farm yield for a combined burley farm shall be the weighted average of the tract yields for the tracts being combined. The weighted average shall be the summation of the extensions of each respective tract's contribution percentage times the tract's yield.

(b) *Flue-cured tobacco.* Flue-cured farm acreage allotments, history acreages, and other basic data for combined farms shall be computed for the base period in accordance with part 719 of this chapter, except that the preliminary farm yield for a combined farm shall be the weighted average of the tract yields for the tracts that comprise the combination. The weighted average shall be the summation of the extensions of the each respective tract's contribution percentage times the tract's yield. The farm yield for the combined farm shall be determined by multiplying the preliminary farm yield for the combined farm by the national yield factor for the current year.

§ 723.210 Corrections of errors and adjusting inequities in acreage allotments and marketing quotas for old farms.

(a)(1) *General.* The allotment or quota for a farm under a long-term land use program agreement shall be given the same consideration under this section as the allotment or quota for any other old farm. Notwithstanding the limitations contained in any other section of this part, the farm acreage allotment or marketing quota for each kind of tobacco established for an old farm may be increased to correct an error or adjust an inequity if the county ASC committee determines, with the approval of a representative of the State ASC committee, that the increase is necessary to establish an allotment or quota for such farm which is fair and equitable in relation to the allotment or quota for other old farms in the county in which the farm is located. Correction of errors shall be made out of that portion of the national reserve held at the national level.

(2) *Burley tobacco.* The reserve for adjusting inequities under this paragraph will be prorated to States based on the relationship of the total of the preliminary farm marketing quotas in each State to the national total of preliminary farm marketing quotas.

(3) *All kinds of tobacco except burley tobacco.* The reserve for adjusting inequities under this paragraph will be prorated to States based on the relationship of the total preliminary farm acreage allotments in each State to the national total of preliminary farm acreage allotments.

(b) *Basis for adjustment.* Increases to adjust inequities in acreage allotments or marketing quotas shall be made on the basis of the past farm acreage, yields, and farm acreage allotments of tobacco, making due allowances for failed acreage and acreage prevented from being planted because of a natural disaster as determined under part 718 of this chapter; land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco. The total of all adjustments in old farm allotments or quotas under this paragraph shall not exceed the pounds apportioned to the county for such purpose.

(c)(1) *Burley tobacco.* Adjustments in a farm marketing quota under this paragraph shall become a part of the farm marketing quota.

(2) *Flue-cured tobacco.* Acreage apportioned to a farm under this section becomes a part of the farm acreage allotment. The farm marketing quota for such a farm shall be adjusted by multiplying the adjusted farm acreage allotment by the farm yield.

(3) *All other kinds of tobacco.* For all other kinds of tobacco, acreage approved for a farm under this section becomes a part of the farm acreage allotment.

§ 723.211 Allotments, quotas, and yields for farms acquired under right of eminent domain.

(a) *Determination of acreage allotments and marketing quotas.* The determination of farm acreage allotments and marketing quotas for farms acquired by an agency having the right of eminent domain, the transfer of such allotments or quotas to a pool, and reallocation from the pool shall be administered as provided in part 719 of this chapter. Where all or a part of an allotment or quota is pooled, all or a proportionate part of the farm acreage allotment or marketing quota shall be pooled.

(b) *Closing dates.* The State ASC committee shall establish, in accordance with instructions issued by the Deputy Administrator, a final date for:

(1) *Release.* Releasing pooled farm acreage allotment or farm marketing quota to the county ASC committee for reapportionment to other farms in the

county having allotments or quotas for the same kinds of tobacco.

(2) *Request for reapportionment.* Filing a request to receive reapportioned acreage or quota from the county ASC committee for the current year.

(c) *Displaced owner release.* The displaced owner of a farm may, not later than the final release date established by the State ASC committee for the current year, release in writing to the county ASC committee for the current year, all or any part of the acreage allotment or burley tobacco marketing quota for the farm in a pool under part 719 of this chapter for reapportionment for the current year by the county committee to other farms in the county having allotments or marketing quotas for the same kind of tobacco.

(d) *Reapportionment.* The county ASC committee may reapportion, not later than 30 days after the final date established by the State ASC committee for requesting reapportioned acreage or marketing quota for the current year, the released acreage or quota or any part thereof to other farms in the county on the basis of the past farm acreage or marketings and the past farm acreage allotments or quotas for the same kind of tobacco; land, labor, and equipment available for the production of such kind of tobacco; crop rotation practices; and soil and other physical factors affecting the production of such kind of tobacco.

(e) *Effect of reapportionment.* For purposes of establishing future farm allotments or quotas, any reapportioned allotment or quota shall not be considered as planted on the farm to which the allotment or quota was reapportioned.

(f) *Burley or flue-cured tobacco provisions.* For burley or flue-cured tobacco:

(1) *Farm Yield.* The farm yield for a farm to which a pooled marketing quota is transferred shall be determined in accordance with instructions issued by the Deputy Administrator.

(2) *Undermarketings or overmarketings.* The undermarketings of a farm acquired by eminent domain shall be added to the marketing quota for the receiving farm and the overmarketings of the acquired farm shall be subtracted from the marketing quota of the receiving farm.

(3) *Undermarketings while in eminent domain pool.* The pooled quota is considered planted while in the pool. Therefore, for the purpose of determining undermarketings during the time the quota is pooled, the effective quota is considered to be zero.

§ 723.212 Time for making reduction of farm marketing quotas or acreage allotments for violation of the marketing quota or acreage allotment regulations for a prior marketing year.

Any reduction made in a farm acreage allotment or farm marketing quota for the current year for any of the reasons provided for in § 723.408 of this part, shall be made no later than April 1 of the current year in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia; or May 1 in all other States. If the reduction cannot be made by such dates for the current year, the reduction shall be made in the farm acreage allotment or farm marketing quota next established for the farm, but no later than by corresponding dates in a later year. No reduction shall be made in the farm acreage allotment or farm marketing quota for any farm for a violation if the farm acreage allotment or marketing quota for such farm for any prior year was reduced because of the same violation.

§ 723.213 Approval of acreage allotments and marketing quotas and notices to farm operators.

(a) *Review by State ASC committee.* All farm yields, acreage allotments, and marketing quotas shall be determined by the county ASC committee of the county in which the farm is located and shall be reviewed by a representative of the State ASC committee.

(b) *Notice to farm operator.* An official notice of the effective farm acreage allotment or farm marketing quota shall be mailed to the operator of each farm shown by the records of the county ASC committee to be entitled to an allotment or quota. The notice to the operator of the farm shall constitute notice to all persons who as operator, landlord, tenant, or sharecropper are interested in the farm for which the allotment or quota is established. Insofar as practicable, all notices shall be mailed in time to be received prior to the date of any tobacco marketing quota or acreage allotment referendum. A copy of such notice containing the date of mailing or a printout summary of such data shall be maintained for not less than 30 days in a conspicuous place in the county ASCS office and shall thereafter be kept available for public inspection in the office of the county ASC committee. A copy of the notice of acreage allotment or marketing quota certified as true and correct shall be furnished without charge to any person interested in the farm for which the allotment or quota is established.

(c) *Mailing notices.*—(1) *All kinds of tobacco.* If the county ASC committee

determines that the acreage allotment or farm marketing quota established for any farm may be changed because of,

(i) *Violations.* A violation of the acreage allotment or marketing quota regulations for a prior marketing year,

(ii) *Agricultural production.* Removal of the farm from agricultural production,

(iii) *Farm division.* Division of the farm, or

(iv) *Farm combination.* Combination of the farm, mailing of the notice of such acreage allotment or marketing quota may be delayed, but not later than the date specified in paragraph (c)(2) of this section.

(2) *Time for mailing notices.* The notice of acreage allotment or marketing quota for any farm shall be mailed no later than April 1 of the current year in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia or May 1 of the current year in all other States.

(d) *Marketing quota erroneous notice.*—(1) If the official written notice of the farm acreage allotment and marketing quota issued for any farm erroneously stated an acreage allotment or marketing quota larger than the correct effective farm acreage allotment or marketing quota, the acreage allotment or marketing quota shown on the erroneous notice shall be deemed to be the tobacco acreage allotment or marketing quota for the farm for the current year only, if the county ASC committee determines (with the approval of the State Executive Director) that the:

(i) Error was not so gross as to place the operator on notice thereof, and

(ii) Operator, relying upon such notice and acting in good faith, materially changes the operator's position with respect to the production of the crop.

(2) Undermarketings and overmarketings for farms for which the erroneous notice of marketing quota is applied shall be determined based on the correct effective farm marketing quota.

(3) For purposes of determining history acreage the correct acreage allotment shall be used, in determining whether or not 75 percent of the allotment has been planted.

§ 723.214 Application for review.

Any producer who is dissatisfied with the farm acreage allotment and marketing quota established for the producer's farm may, within 15 days after mailing of the official notice of the farm acreage allotment and marketing quota, file application in writing with the county ASCS office to have such allotment and marketing quota reviewed

by a review committee in accordance with part 711 of this chapter.

§ 723.215 Transfer of tobacco farm acreage allotment or farm marketing quota that cannot be planted or replanted due to a natural disaster.

(a) *Designation of counties affected by a natural disaster.* The State ASC committee shall determine those counties affected by a natural disaster (including but not limited to hurricane, rain, flash flood, hail, drought, and any other severe weather) which prevents the timely planting or replanting of any of the tobacco acreage allotment or marketing quota for any farm in the county. The county ASC committee of each county affected by the determination shall publicize the determination.

(b) *Application for transfer.* The owner or operator of a farm in a county designated for any year under paragraph (a) of this section may file a written application for transfer of tobacco acreage with the farm acreage allotment or marketing quota for such year to another farm or farms in the same county or in any other nearby county in the same or another State if such acreage cannot be planted or replanted because of the natural disaster determined for such year. The application shall be filed with the county ASC committee for the county in which the farm affected by such disaster is located. If the application involves a transfer to a nearby county, the county ASC committee for the nearby county shall be consulted before action is taken by the county ASC committee receiving the application.

(c)(1) *Amount of burley tobacco transfer.* The burley quota to be transferred shall not exceed the smaller of:

(i) The effective farm quota established under this part less such quota planted to tobacco and not destroyed by the natural disaster, or

(ii) The quota requested to be transferred.

(2) *Amount of transfer for other than burley tobacco.* The allotment to be transferred shall not exceed the smaller of:

(i) The farm allotment established under this part less such acreage planted to tobacco and not destroyed by the natural disaster, or

(ii) The allotment requested to be transferred.

(d) *County ASC committee approval.* The county ASC committee shall approve the transfer if it finds that:

(1) All or part of the farm acreage allotment or marketing quota for the

transferring farm could not be timely planted or replanted because of the natural disaster.

(2) One or more of the producers of tobacco on the transferring farm will be a bona fide producer engaged in the production of tobacco on the receiving farm and will share in the proceeds of the tobacco.

(e) *Cancellation of transfer.* If a transfer is approved under this section and it is later determined that the conditions in paragraph (d) of this section have not been met, the county ASC committee, or the Deputy Administrator may cancel such transfer. Action by the county ASC committee to cancel a transfer shall be subject to the approval of the State ASC committee or its representative.

(f) *Acreage history credits.* Any acreage transferred under this paragraph shall be considered for the purpose of determining future allotments or quotas to have been planted to tobacco on the farm from which such allotment or quota is transferred.

(g) *Closing dates.* The closing date for filing applications for transfers with the county ASC committee shall be July 15 of the current year. Notwithstanding such closing date requirement, the county ASC committee may accept applications filed after the closing date upon a determination by the county ASC committee that the failure to timely file an application was the result of conditions beyond the control of the applicant and a representative of the State ASC committee approves such determination.

§ 723.216 Transfer of tobacco acreage allotment or marketing quota by sale, lease, or owner.

(a) Except with respect to cigar binder (types 54 and 55) tobacco, tobacco acreage allotments or marketing quotas may be transferred between eligible farms in accordance with the provisions of this section.

(1) *Types of transfers.* With respect to: (i) Cigar filler (type 46) and cigar filler (types 42, 43, and 44), tobacco, transfers may be by lease only.

(ii) Flue-cured tobacco, transfers may be by:

(A) Sale, or

(B) Lease under certain natural disaster conditions provided in this section.

(iii) Burley tobacco, transfers may be by:

(A) Lease,

(B) Owner, or

(C) Sale, when a sale is required to prevent forfeiture of purchased or reallocated quota.

(iv) Fire-cured, dark air-cured, and Virginia sun-cured tobacco, transfers may be by:

(A) Lease,

(B) Owner, or

(C) Sale.

(2) *Transfer agreement.* In order to transfer a marketing quota or allotment between two eligible farms, including a marketing quota or allotment that is pooled in accordance with part 719 of this chapter, the transfer must be recorded on Form ASCS-375 and:

(i) *Where to file.* Filed in the county ASCS office which serves the county in which the transferring farm is located for administrative purposes.

(ii) *Signature-burley tobacco.* Signed by, for burley tobacco only:

(A) *Leases.* The owner and operator of the transferring farm and the owner or operator of the receiving farm.

(B) *Sales.* The owner of the selling farm and an active burley tobacco producer who is the buyer. If the buyer is neither owner nor operator of the farm to which the quota will be assigned, the owner or operator of the farm must give written consent for the quota to be assigned to the farm.

(C) *Owner transfers.* The owner of the transferring farm, who also must be the owner or operator of the receiving farm.

(iii) *Signature-flue-cured tobacco.* Signed by, for flue-cured tobacco only:

(A) *Leases.* The owner of the transferring farm and the owner or operator of the receiving farm.

(B) *Sales.* The owner of the selling farm and an active flue-cured tobacco producer who is the buyer. If the buyer is neither owner nor operator of the farm to which allotment and quota will be assigned, the owner or operator of the farm must be given written consent for the allotment and quota to be assigned to the farm.

(iv) *Signatures—except burley and flue-cured tobacco.* Signed by, for all kinds of tobacco other than burley and flue-cured tobacco, the owner and operator of the transferring farm and the owner or operator of the receiving farm.

(v) *Witness.* Each person whose signature is required by paragraphs (a)(2) (ii), (iii), or (iv) of this section must sign Form ASCS-375 in the presence of a State or county ASC committee member or employee who shall sign Form ASCS-375 as a witness, except that when both the owner and the operator of a transferring farm must sign, such witness is required for the signature of either the owner or operator, but not both. If such signatures cannot be witnessed in the county ASCS office where the farm is administratively located, they may be witnessed in any State or county ASCS office convenient

to the owner or operator's residence. The requirement that signatures be witnessed for producers that are ill, infirm, reside in distant areas, or are in similar hardship situations or may be unduly inconvenienced may be waived provided the county ASCS office mails Form ASCS-375 for the required signatures;

(b) *Effective date.* In order for the transfer to be effective for the current year, the Form ASCS-375 shall be filed:

(1) *When to file—burley tobacco.* For burley tobacco:

(i) On or before July 1 of the current year, except as provided in paragraph (b)(1)(ii) of this section. An agreement to transfer quota by lease may be considered to have been filed on July 1 of the current year if such transfer agreement is filed not later than the end of the marketing year that begins during the current year and the county ASC committee, with the concurrence of the State ASC committee, determines that on or before July 1 of the current year the lessee and lessor agreed to such lease and transfer of quota and the failure to file such transfer agreement did not result from gross negligence on the part of any party to such lease and transfer.

(ii) After July 1 of the current crop year and before February 16 of the following calendar year when the transfer is by lease and the transferring farm has suffered a loss of production of burley tobacco due to hail, drought, excessive rain, wind, tornado, or other natural disasters as determined by the Deputy Administrator.

(2) *When to file—flue-cured tobacco.* For flue-cured tobacco:

(i) On or before June 15 if the transfer is by sale.

(ii) After June 30 and on or before November 15 for a transfer by lease when the transferring farm has suffered a loss of production of flue-cured tobacco due to drought, excessive rain, hail, wind, tornado, or other natural disasters as determined by the Deputy Administrator.

(3) *When to file—except burley and flue-cured tobacco.* For all other kinds of tobacco, by the date established by the State ASC committee, except that a lease shall be effective if the county ASC committee, with the approval of a State ASC committee representative, finds that the producer was prevented from timely filing the transfer agreement due to reasons beyond the control of the producer.

(c) *Approval or disapproval.* The county ASC committee or its designee shall approve each transfer agreement that meets the eligibility requirements of

this section. The county ASC committee shall disapprove any transfer agreement that does not meet the eligibility requirement of this section. Any approval or disapproval of a transfer agreement shall to the extent possible be made within 30 days after the transfer agreement is filed with the county ASC committee unless additional time is required as the result of conditions beyond the control of the county ASC committee. However:

(1) *Burley tobacco.* If an agreement is filed after July 1 which provides for the sale of quota, a transfer agreement shall not be approved until the next year's quota is computed for the selling farm. In addition, if marketing quota referendum will be conducted to determine whether or not quotas will be in effect for the crop, a transfer agreement shall not be approved until the Secretary announces that quotas have been approved by referendum.

(2) *Flue-cured tobacco.* If an agreement is filed after June 15 which provides for the sale of an allotment and quota, a transfer agreement shall not be approved until next year's allotment and quota is computed for the selling farm. In addition, if a marketing quota referendum will be conducted to determine whether or not quotas will be in effect for the crop, a transfer agreement shall not be approved until the Secretary announces that quotas have been approved by referendum.

(d) *Time of determination.* An approved transfer agreement shall become effective for the then current crop year, except that if an agreement that is filed after June 15 for the sale of flue-cured tobacco quota or after July 1 for the sale of burley tobacco quota, such approved agreement shall become effective for the next crop year.

(e) *Burley tobacco.* For burley tobacco only:

(1) *Basis for transfer by sale.* If the transfer of a quota is by sale, the transfer shall be based on part or all of the farm poundage quota.

(2) *Basis for transfer by lease or owner.* If the transfer of a quota is by lease or by the owner, transfer shall be based on a part or all of the effective farm poundage quota.

(3) *Accumulation of quota.* A transfer by lease or by owner shall not be approved if the county ASC committee determines that the primary purpose of the transfer is to accumulate the quota on the farm (i.e., alternately transferring to and from the farm for 2 or more years to maintain the quota without satisfactory evidence of plans for producing the quota on the receiving farm).

(4) *Subleasing.* In order to determine whether there is any subleasing of a burley farm marketing quota, the current year is divided into two periods, the period up to and including July 1, and the period after July 1. The county ASC committee shall not approve a transfer during either period if the effect would be both a transfer to and from the farm during the same period. However, a transfer may be approved within any crop year if quota is transferred from a farm for one or more years and the farm subsequently is combined with another farm that otherwise is eligible to receive quota by lease or by the owner.

(5) *Transferring farm restrictions.* An agreement to transfer quota from a farm by lease or by the owner shall not be approved:

(i) *Limitation.* If the pounds of quota being transferred exceed the difference obtained by subtracting from the effective farm marketing quota the total pounds of quota purchased and/or reallocated from forfeited quota in the current and two preceding years, as adjusted to reflect changes in national quota factors which have occurred since each respective purchase and/or reallocation of quota. However, this provision shall not be applicable to transfer agreements that are filed after July.

(ii) *New farm.* If the farm is a new farm.

(iii) *Reduction pending.* If consideration of a marketing quota violation is pending which may result in a quota reduction for the farm for the current year. However, if the county ASC committee determines that a decision will not be made on the pending case on or before the date specified in § 723.212 of this part, a 1-year transfer will be approved if otherwise eligible.

(iv) *Filed on or before July 1.* Unless the receiving farm is administratively located in the same county as the transferring farm.

(v) *Filed after July 1.* If the transfer agreement is filed after July 1, unless the county ASC committee in the county in which the farm is located for administrative purposes determines that the:

(A) Farm's expected production of burley tobacco is less than 80 percent of the farm's effective marketing quota as a result of a flood, hail, wind, drought, excessive rain, tornado, or other natural disaster.

(B) Acreage planted to burley tobacco on the farm was sufficient to produce, under average conditions, an amount of tobacco which, when added to any carryover tobacco from the previous

marketing year, would equal the farm's effective farm marketing quota.

(C) Lessor made reasonable and customary efforts to produce the effective farm marketing quota;

(D) Producers on the farm qualify for price support in accordance with the provisions of Part 1464 of this title; and

(E) Receiving farm is administratively located in the same State as the transferring farm.

(vi) *Consent of lien holder.* For a multiple year transfer, if the farm is subject to lien, unless the lien holder agrees in writing to the transfer; and

(vii) *Claim for marketing quota penalty.* If a claim has been filed against the lessor for a tobacco marketing quota penalty and the claim remains unpaid; However, this provision shall not apply if the claim is paid or the entire proceeds of the lease of the quota are applied against the claim and the county ASC committee determines that the amount paid for the lease represents a reasonable price for the pounds of quota being leased.

(viii) *Forfeiture pending.* To the extent that forfeiture of such quota is expected to become final before July 1.

(6) *Receiving farm restrictions.* An agreement to transfer quota to a farm by lease or by owner shall not be approved:

(i) *Filed on or before July 1.* If the transfer agreement is filed on or before July 1:

(A) Unless the receiving farm is administratively located in the same county as the transferring farm.

(B) If the pounds of quota being transferred to the farm by lease or by the owner exceed the smaller of 15,000 pounds or the difference between the farm marketing quota and one-half the result obtained by multiplying the acres of cropland on the farm by the farm yield.

(ii) *Filed after July 1.* If the transfer agreement is filed after July 1, unless the:

(A) Producers on the farm qualify for price support in accordance with the provisions of part 1464 of this title; and

(B) Pounds of quota to be transferred to the lessee farm do not exceed the difference obtained by subtracting the effective farm marketing quota (before the filing of the transfer agreement) for the lessee farm from the total pounds of tobacco marketed and/or available for marketing (based on estimated pounds of tobacco on hand and/or in the process of being produced) from the farm in the current year.

(C) Transferring farm is administratively located in the same State as the receiving farm.

(7) *Selling farm restrictions.* A transfer of quota from a farm by sale shall not be approved:

(i) *Forfeiture otherwise required.* Unless forfeiture of the quota otherwise would be required. However, this provision may be waived if:

(A) The quota was purchased and/or reallocated to the farm during four preceding years; and

(B) The county ASC committee, with the concurrence of a representative of the State ASC committee, determines that the failure to permit the sale of quota, to the extent otherwise permitted by this section, would cause an undue hardship on the seller and the:

(1) Sale is in connection with the settlement of an estate which includes the farm for which the quota was established;

(2) Owner of the quota is experiencing financial distress to the extent that current year financing is unlikely;

(3) Owner of the quota is disabled due to health reasons to the extent that such person can no longer continue to share in the risk of production of the purchased and/or reallocated quota; or

(4) Owner of the quota is sharing in the risk of production as an investing producer and loses resources necessary to produce the crop due to reasons beyond such owner's control such as the loss of a tenant or sharecropper and a replacement can not be obtained.

(ii) *Location of farms.* Unless both the selling farm and the buying farm are administratively located in the same county.

(iii) *Pounds in excess of required forfeiture.* If the pounds of quota being transferred exceed the pounds of quota for which forfeiture otherwise is required.

(iv) *Reduction pending.* If consideration of an indicated marketing quota violation is pending which may result in quota reduction for the farm for the current year. However, if the county ASC committee determines that a decision will not be made on the pending case on or before the date specified in § 723.212 of this part, a transfer will be approved if otherwise eligible.

(v) *Forfeiture pending.* If the agreement for transfer by sale is filed subsequent to the final date which is permitted for the sale of the quota in order to prevent forfeiture.

(vi) *Claim for marketing quota penalty.* If a claim has been filed against the seller for a tobacco marketing quota penalty and the claim remains unpaid: However, this provision shall not be applicable if the claim for such penalty is paid or the entire proceeds of the sale of the quota are applied against the

claim and the county ASC committee determines that the amount paid represents a reasonable selling price for the pounds of quota being sold.

(8) *Restrictions on buying farm.* A transfer of quota to a farm by purchase shall not be approved:

(i) *Active producers.* Unless the buyer is an active burley tobacco producer.

(ii) *Cropland limitation.* If the sum of the pounds of quota being transferred, plus the pounds of quota previously transferred to the farm in the current year by lease or by the owner, exceeds the difference between the farm marketing quota and one-half the result obtained by multiplying the acres of cropland on the farm by the farm yield.

(iii) *Quota previously sold.* If the farm owner sold quota from the farm during the current or either of the two preceding years to prevent a forfeiture of the quota.

(iv) Unless both the buying farm and the selling farm are administratively located in the same county.

(9) *Period of transfer.* A transfer by lease or by owner may be for a period of one to five years: However, an agreement to transfer quota by lease shall be limited to the current crop year if the transfer is filed after July 1 in accordance with the natural disaster provisions of this section.

(10) *Redetermination of quota after transfer by lease or by the owner.* After a transfer by lease or by the owner, the effective farm marketing quota shall be redetermined for both the transferring farm and the receiving farm.

(11) *Apportionment of data-selling farm.* The pounds of farm marketing quota retained on the selling farm after the sale of quota shall be divided by the farm marketing quota established for the selling farm before the sale to determine a factor for apportioning farm data. The data to be retained on the selling farm shall be determined by multiplying the factor by the following data:

(i) The amount of any overmarketings which have not been subtracted when a determination is made of the effective farm marketing quota of the selling farm;

(ii) The pounds of quota which have been transferred from the selling farm by lease or by the owner in the current year;

(iii) The pounds of quota which have been reduced in the current year as the result of a marketing quota violation in a prior year;

(iv) The pounds of quota transferred to the farm by lease or by owner in the previous year;

(v) The previous year's farm marketing quota; and

(vi) The previous year's effective farm marketing quota.

(12) *Apportionment of data-buying farm.* The buying farm's share of each respective item of farm data shall be determined by subtracting the pounds which are retained on the selling farm for the respective item from the pounds which were established for the selling farm for the respective item before the current sale of quota. However, the pounds of quota transferred from the selling farm by lease or by the owner and/or the pounds of quota reduction resulting from a marketing quota violation on the selling farm may be apportioned between the farms in accordance with a written agreement between the buyer and the seller if the farm marketing quota retained on the selling farm is sufficient to satisfy the pounds of quota which were transferred by lease or by the owner, the pounds of quota which have been reduced as the result of a marketing quota violation, and the overmarketings for the farm, if any. The data determined in accordance with this paragraph shall be added to any previous data for the buying farm.

(13) *Redetermination Quota after sale or purchase of quota.* After adjusting the data in accordance with the provisions of this section, the effective farm marketing quota shall be determined for both the buying and selling farm.

(14) *Farm division after transfer by lease.* If a farm is divided after there has been a transfer of a marketing quota to the farm by lease, the transferred quota shall be divided in the manner which is designated in writing by the lessee. In the absence of a written designation, the leased quota shall be apportioned in the same manner as the farm marketing quota of the parent farm.

(15) *Multiple year transfer by lease or by owner.* The effective farm marketing quota on a receiving farm having a multiple-year transfer agreement in effect shall be adjusted for each year for which such transfer agreement is in effect to reflect any decrease in the national quota factor which causes the farm marketing quota established for the transferring farm to be less than the pounds of quota which have been transferred to the receiving farm.

(16) *Considered planted credit.* Considered planted credit shall be given to the transferring farm when tobacco quota is transferred from the farm by lease or by owner.

(f) *Flue-cured tobacco.* For flue-cured tobacco only:

(1) *Location of buying and selling farms.* Marketing quota transferred by sale must be to a farm administratively located within the same county.

(2) *Maximum quota to be transferred by sale.* If the transfer is by sale, the

transfer shall be based on part or all of the farm poundage quota. The maximum quota that may be transferred by sale is the farm poundage quota.

(3) *Transfer by lease-involvement of outside parties.* If the transfer is by lease, only the lessor and lessee (or any attorney, trustee, bank, or other agent who regularly represents either the lessor or lessee in business transactions unrelated to the production or marketing of tobacco) may be parties to, or involved in the arrangements for such transfer. The transfer shall be based on a portion or all of the effective farm poundage quota. The maximum quota that may be transferred by lease is the effective farm poundage quota.

(4) *Lessor farm restrictions.* A transfer of quota from a farm by lease shall not be approved:

(i) *New farm.* If the farm is a new farm.

(ii) *Natural disaster.* Unless the county ASC committee in the county in which the farm is located for administrative purposes determines that the:

(A)(1) The farm has planted an acreage equal to or more than 90 percent of the effective farm acreage allotment, or

(2) In accordance with guidelines issued by the Deputy Administrator, the planted acreage of flue-cured tobacco on the farm is sufficient to produce, under average conditions, an amount of tobacco which, when added to any carryover tobacco from the previous marketing year, would equal the farm's effective farm marketing quota;

(B) Lessor made reasonable and customary efforts to produce the effective farm marketing quota;

(C) Producers on the farm qualify for price support in accordance with the provisions of part 1464 of this title; and

(D) Farm's expected production of flue-cured tobacco is less than 80 percent of the farm's effective marketing quota as a result of a drought, excessive rain, hail, wind, tornado, or other natural disaster as determined by the Deputy Administrator.

(iii) *Claim for tobacco marketing quota penalty.* If a claim has been filed against the lessor for tobacco marketing quota penalty and the claim remains unpaid unless the claim is paid or the entire proceeds of the lease of the allotment and quota are applied against the claim and the county ASC committee determines that the amount of the lease represents a reasonable price for the pounds of quota being leased.

(iv) *Located in the same State.* Unless the lessor farm is administratively

located in the same State as the lessee farm.

(5) *Lessee farm restrictions.* A transfer of quota to a farm by lease shall not be approved:

(i) *Price support eligibility.* Unless the producers on the farm qualify for price support under the provisions of part 1464 of this title; and

(ii) *Limitation.* If the pounds of quota to be transferred to the lessee farm exceed the difference obtained by subtracting the effective farm marketing quota (before the filing of the transfer agreement) for the lessee farm from the total pounds of tobacco marketed and/or available for marketing (based on estimated pounds of tobacco on hand and/or in the process of being produced) from the farm in the current year.

(iii) *Located in same State.* Unless the lessee farm is administratively located in the same State as the lessor farm.

(6) *Selling farm restrictions.* A transfer of quota from a farm by sale shall not be approved:

(i) *Previously purchased and/or reallocated quota.* If the farm marketing quota includes quota that was bought, and/or reallocated from the quota which has been forfeited and the purchase and/or reallocation became effective in the 4 preceding years: However, this provision shall not be applicable if:

(A)(1) The quota being sold was purchased in such period, if forfeiture of such quota is required by § 723.220 of this part, and the amount of quota being transferred does not exceed the amount of quota for which forfeiture otherwise is required in accordance with the provisions of § 723.220 of this part; or

(2) The county ASC committee, with the concurrence of a representative of the State ASC committee, determines that the failure to approve the sale would cause an undue hardship on the seller and:

(B) The sale is in connection with the settlement of an estate which includes the farm for which the quota was established;

(C) The owner of the quota is experiencing financial distress to the extent that current year financing is unlikely;

(D) The owner of the quota is disabled due to health reasons to the extent that such person can no longer continue to share in the risk of production of the purchased and/or reallocated quota; or

(E) The owner of the quota is sharing in the risk of production as an investing producer and loses resources necessary to produce the crop due to reasons beyond such owner's control such as the loss of a tenant or share cropper and a replacement cannot be obtained.

(ii) *Reduction pending.* If consideration of an indicated violation is pending which may result in an allotment and quota reduction for the farm for the current year. However, if the county ASC committee determines that a decision will not be made on the pending case on or before April 1, a transfer may be approved.

(iii) *Forfeiture pending.* If the agreement for transfer by sale is filed subsequent to the final date which is permitted for the sale of the allotment and quota in order to prevent forfeiture.

(iv) *Consent of lien holder.* If the farm is subject to a lien unless the lien holder agrees in writing to the transfer: However, consent of a lien holder is not required for a transfer of the pounds of quota for which forfeiture is required in accordance with the provisions of § 723.220 of this part.

(v) *Claim for marketing quota penalty.* If a claim has been filed against the seller for a tobacco marketing quota penalty and the claim remains unpaid: However, this provision shall not be applicable if the claim for such penalty is paid or the entire proceeds of the sale of the allotment and quota are applied against the claim and the county ASC committee determines that the amount paid represents a reasonable selling price for the pounds of quota being sold.

(vi) *Allotment and quota subject to an approved Conservation Reserve Program contract.* If the allotment and quota is subject to an approved Conservation Reserve Program contract, unless forfeiture otherwise would be required in accordance with the provisions of § 723.220 of this part.

(7) *Buying farm restrictions.* A transfer of quota to a farm by purchase shall not be approved:

(i) *Active producer.* Unless the buyer is an active flue-cured tobacco producer.

(ii) *Tillable cropland limitation.* If the sum of the pounds of quota being transferred, plus the pounds of quota previously transferred to the farm in the current year by lease, exceeds the difference between the farm marketing quota and one-half the result obtained by multiplying the acres of tillable cropland by the farm yield.

(iii) *Quota previously sold.* If the farm owner sold quota from the farm during the current or any of the 4 preceding years or 2 years if such sale was to prevent a forfeiture of the quota.

(iv) *Installment payment option.* Unless the buyer of the flue-cured tobacco acreage allotment and marketing quota has been afforded an option to pay for such allotment and quota in two to five equal annual installments payable each fall beginning

with the fall of the crop year in which the transfer becomes effective and such buyer certifies on a form prescribed by the Deputy Administrator that such option has been made available to the buyer.

(8) *Allotment and quota after transfer by lease.* The effective farm acreage allotment and the effective farm marketing quota shall be determined for both the lessee farm and the lessor farm in accordance with the provisions of §§ 723.205 and 723.206 of this part, respectively.

(9) *Apportionment of data after transfer of quota by sale-selling farm.* The pounds of farm marketing quota retained on the selling farm after the sale of quota shall be divided by the farm marketing quota established for the selling farm before the sale to determine a factor for apportioning farm data for the current year and for the base period. The data to be retained on the selling farm shall be determined by multiplying the factor by the following data:

- (i) The planted and considered planted acres for the base period;
- (ii) The history acres for the base period;
- (iii) The farm acreage allotment for the current year and for the base period;
- (iv) The amount of any overmarketings which have not been subtracted when a determination is made of the effective farm marketing quota of the selling farm;
- (v) The pounds of quota which have been transferred from the selling farm by lease in the current year;
- (vi) The acres of allotment which have been reduced in the current year as the result of a marketing quota violation in a prior year;
- (vii) The pounds of quota transferred to the farm by lease in the previous year;
- (viii) The previous year's farm marketing quota;
- (ix) The previous year's effective farm marketing quota and
- (x) The previous year's marketings.

(10) *Apportionment of data-buying farm.* The pounds of farm marketing quota which have been purchased shall be divided by the farm yield for the buying farm in order to determine the farm acreage allotment for the buying farm. The buying farm's share of other farm data shall be determined by subtracting the acres or pounds, as applicable, which are retained on the selling farm from the acres or pounds which were established for the selling farm before the current sale of quota: However, the acres computed for the acres of reduction resulting from a marketing quota violation for the buying farm shall be multiplied by a factor

determined by dividing the farm yield of the selling farm by the farm yield of the buying farm in order to determine the acres of reduction from the buying farm for the current year. The pounds of quota transferred from the selling farm by lease and/or the acres of allotment reduction resulting from a marketing quota violation on the selling farm may be apportioned between the farms in accordance with a written agreement between the buyer and the seller if the farm marketing quota retained on the selling farm is sufficient to satisfy the pounds of quota which are leased, the pounds of quota which have been reduced as the result of a marketing quota violation, and the overmarketings for the farm, if any. The data determined in accordance with this paragraph shall be added to any previous data for the buying farm.

(11) *Allotment and quota.* After adjusting the data in accordance with the provisions of this section, the farm acreage allotment, the effective farm acreage allotment, and the effective farm marketing quota shall be determined for both the buying and the selling farm.

(12) *Effect of price support eligibility.* If a lease agreement is filed after the farm operator reports the acreage of tobacco on the farm in the current year, the effective farm acreage allotment which has been determined prior to the approval of the transfer will be used in determining price support eligibility for the farm.

(13) *Violation of lease provisions.* (i) If, after a lease agreement is approved, information is brought to the attention of the county ASC committee which indicates that either the lessor or the lessee, or both, knowingly filed a false certification with respect to a transfer of quota by lease, the county ASC committee shall schedule a hearing, notify such person of the time and place of the hearing, and present evidence at the hearing with respect to the allegation of false certification. If, as a result of the evidence presented, the county ASC committee determines that such person knowingly made a false certification, the county ASC committee shall notify the person of the determination and afford such person 15 days after the mailing of the notice to request a review of the determination by a review committee as provided for by part 711 of this chapter.

(ii) If it is determined that the lessor knowingly made a false certification, the next flue-cured tobacco acreage allotment and marketing quota established for the lessor's farm shall be reduced by that percentage which the leased quota was of the total flue-cured

tobacco farm marketing quota established for the farm in the year of the lease.

(iii) If it is determined that the lessee knowingly made a false certification, the lease agreement for purposes of the flue-cured tobacco marketing quota program with respect to the lessee's farm shall be considered to be null and void as of the date approved by the county ASC committee.

(14) *Considered planted credit.* Considered planted credit shall be given to the lessor farm for the tobacco acreage allotment which is deducted as the result of the transfer of quota from the farm by lease.

(15) *Sale of quota with installment payment option.* Notwithstanding any other provision of this section the owner of a farm who sells any flue-cured tobacco acreage allotment and marketing quota may:

- (i) Negotiate with more than one prospective buyer before selling such allotment and quota; or
- (ii) Sell such allotment and quota to any eligible buyer whom such owner may select; or
- (iii) Sell such allotment and quota for a single payment; or
- (iv) Include provisions in the agreement of sale to protect the seller's interest if the buyer fails to make full payment. Such provisions may not include the use of such allotment and quota as collateral for purposes of protecting the seller's interest in the allotment and quota.
- (v) Flue-cured tobacco acreage allotment and marketing quota purchased in accordance with this subparagraph shall not revert to the seller's farm but shall remain with the farm to which assigned at the time of purchase even though the buyer fails to make full payment to the seller for such allotment and quota.

(g) *Burley and flue-cured tobacco.* For burley or flue-cured tobacco:

(1) *Carryover tobacco.* If tobacco is marketed after the entire farm marketing quota of the producing farm has been transferred by sale, the tobacco shall be considered as having been marketed on each farm to which farm marketing quota was transferred by sale in accordance with a transfer agreement filed after June 15 for flue-cured tobacco, or July 1 for burley tobacco, of the last year in which a farm marketing quota was established for the producing farm. Such marketing shall be prorated to each farm in proportion to the pounds of farm poundage quota purchased by each farm. If there was more than one farm to which a farm marketing quota was transferred by sale, the marketing may

be assigned to the farms in the manner agreed to in writing by each of the buyers of such farm marketing quota.

(2) *Cancellation of transfer.* A transfer of flue-cured allotment and quota, or burley quota, under this section which was approved in error or on the basis of incorrect information furnished by the parties to the agreement shall be canceled by the county ASC committee. For the purpose of determining any overmarketings and undermarketings from the farms, and for the purpose of determining eligibility for price support and marketing quota penalties, the cancellation shall be effective as of the date of approval. However, such cancellation shall not be effective for the current marketing year for price support and marketing quota penalty purposes if the:

(i) Transfer approval was made in error or on the basis of incorrect information which had been unknowingly furnished by the parties to the agreement; and

(ii) Parties to the transfer agreement were not notified of the cancellation before the marketing for the receiving farm exceeded the correct effective farm marketing quota.

(3) *Canceled because of fraud.* If a transfer of a flue-cured allotment and quota, or burley quota, is canceled because of fraud on the part of the owner of the transferring farm but no fraud is attributable to either the owner or operator of the receiving farm, such cancellation shall be effective as of the date of approval of the transfer except for purposes of determining eligibility for price support and marketing quota penalties for the receiving farm. In such case, the overmarketings shall be charged against the farm from which the transfer was made if the farm, after any reconstitution which may be necessary as a result of fraud, is assigned a flue-cured allotment and quota, or burley quota, against which the overmarketings could be charged. Otherwise, the overmarketings shall be charged against any other farm involved in the fraud having a flue-cured allotment and quota, or burley quota, after any reconstitution required by such fraud. Notwithstanding the foregoing, any overmarketings on the receiving farm which are in excess of the amount of quota involved in the canceled transfer shall be charged against the receiving farm.

(4) *Dissolution or revision of a transfer agreement.* A transfer agreement may be dissolved or minor revisions made with respect to such agreement if a written request by all parties to the agreement is made to the county ASC committee by November 15 of the current marketing year for flue-

cured tobacco, or by February 15 of the current marketing year for burley tobacco. After any such dissolution or revision of a transfer agreement, an official notice of the flue-cured acreage allotment and marketing quota, or burley quota, shall be issued by the county ASC committee to each of the operators involved in the transfer agreement.

(h) *Cigar tobacco.* For cigar-filler (type 46) and cigar-filler (types 42, 43, and 44) tobacco only, the provisions of paragraph (j) of this section are applicable in addition to the following:

(1) *Farm eligible.* The owner and operator (acting together if different person) of any farm for which an old farm tobacco acreage allotment is established for the current year may lease and transfer all or any part of the farm acreage allotment established for such farm to any other owner or operator of a farm in the same county with a current year's allotment (old or new farm) for the same kind of tobacco for use on such farm. Transfer of allotments by lease shall not exceed 5 years.

(2) *Transfer approved acre per acre.* The lease and transfer shall be approved acre per acre.

(3) *Considered planted credit.* The amount of allotment acreage which is leased from a farm shall be considered for the purpose of determining future allotments (and tobacco history acreage) to have been planted to tobacco on such farm. The amount of allotment acreage which is leased and transferred to a farm shall not be taken into account in establishing allotments for subsequent years for such farms.

(4) *Limitation on acreage transferred.* The total acreage allotted to any farm after the transfer by lease of tobacco acreage allotment to the farm shall not exceed 50 percent of the acreage of cropland in the farm, except that in the case of cigar-filler (types 42, 43, 44, and 46) transfers, such transfers shall be limited to a total of 10 acres.

(5) *Transfer from the pool.* Allotments in a pool pursuant to part 719 of this chapter may be eligible for lease and transfer during the 3-year life of the pooled allotment. An agreement to lease and transfer shall not serve to extend the life of such pooled allotment.

(i) *Fire-cured, Dark air-cured, and Virginia sun-cured tobacco.* For Fire-cured, Dark air-cured, and Virginia sun-cured tobacco, only, the following provisions of this section are applicable in addition to the following:

(1) *Persons eligible to file a record of transfer (ASCS-375)—sale or lease.* The owner and operator of any old farm for which a Fire-cured, Dark air-cured, or

Virginia sun-cured tobacco allotment is established for the current year may sell or lease all or any part of such allotment to any other owner or operator of a farm in the same county, and in the same State for Virginia fire-cured (type 21) or Virginia sun-cured (type 37) tobaccos. The receiving farm need not be an old farm. In the case of a permanent transfer, a statement signed by all parties to the transaction confirming that the sale has been made shall be filed with the county ASC committee.

(2) *By owner.* The owner of any old tobacco farm for which a Fire-cured, Dark air-cured, or Virginia sun-cured tobacco allotment is established for the current year may transfer any or all of such allotment permanently, or for a term of years designated by the owner, to another farm in the same county (within the same State for Virginia fire-cured and Virginia sun-cured tobacco) owned or controlled by such owner.

(3) *Maximum period of transfer by lease.* Transfer of allotments by lease shall not exceed 5 years.

(4) *Productivity adjustment-reductions in farm allotments being transferred.* The county ASC committee shall determine a normal yield per acre for each farm from which, and for each farm to which, a tobacco acreage allotment or any part thereof is transferred. (For across county line transfers, the county ASC committee for the county in which each farm is located shall determine the normal yield.) If the normal yield for the farm to which transfer is made for the year the transfer is to take effect exceeds the normal yield for the farm from which the transfer is to take effect by more than 10 percent, the allotment so transferred shall be reduced for differences in farm productivity. The county ASC committee shall determine the amount of allotment to be transferred by sale, lease, and by owner, where productivity adjustment is required under this paragraph as follows:

(i) Multiply the normal yield established for the farm from which the allotment is being transferred by the acreage being transferred, then

(ii) Divide the result by the normal yield established for the farm to which the allotment is to be so transferred. The amount of allotment so transferred from a farm shall be the full amount and the amount of allotment so transferred to a farm shall be the reduced amount. In the case of temporary transfers of allotment for 1 or more years by lease or by owner, the productivity adjustment and amount so transferred shall be redetermined by the county ASC

committee each year the transfer remains in effect.

(5) *Adjustments in farm history acreage.* The farm history acreage for the immediately preceding 5 years on farms from which and to which permanent transfer of allotment is made shall be adjusted by the county ASC committee for each of the base years to correspond with the amount of allotment transferred between the farms. In the case of temporary transfers of allotment for 1 or more years by lease or by owner, the farm history acreage shall not be reduced on the farm from which the transfer is made and farm history acreage shall not be transferred to the receiving farm.

(6) *Limitation on acreage transferred.* The total of the Fire-cured, Dark air-cured, or Virginia sun-cured tobacco allotment which may be transferred for each kind of tobacco, by sale, lease, or by owner, to a farm shall not exceed 10 acres of allotment. However, the total of each acreage for each kind of tobacco allotted to any farm after such transfer (the sum of its own allotment and the acreage transferred after any adjustment in normal yields for the current year) shall not exceed 50 percent of the acreage of cropland on the farm. The cropland in the farm for the current year for purposes of such transfers shall be the total cropland as defined in part 719 of this chapter.

(7) *Prohibition on permanent transfer.* A permanent transfer by sale or by owner shall not be approved from any farm to which an allotment was permanently transferred by sale or by owner within the 3 immediately preceding crop years.

(8) *Temporary transfer to non-owned farm.* A transfer requested on a temporary basis to a farm controlled but not owned by the applicant shall be approved only if the applicant will be the operator of the farm to which the transfer is to be made for each year of the period for which the transfer is requested. When the applicant for whom such transfer has been approved no longer is the operator of the receiving farm due to conditions beyond such operator's control, the transfer shall remain in effect unless the transfer is terminated under the provisions of paragraph (j) of this section. Conditions beyond the operator's control shall include, but not be limited to, death, illness, incompetence, or bankruptcy of such person.

(9) *Transfer of pooled allotment.* Allotments established for a farm as pooled allotment under part 719 of this chapter may be transferred on a:

(i) Permanent basis during the 3-year life of a pooled allotment, or

(ii) Temporary basis for a term of years not to exceed the remaining number of crop years of such 3-year period. A temporary agreement to transfer shall not serve to extend the life of such pooled allotment.

(10) *New farm eligibility.* Any farm from which the entire farm allotment is sold or permanently transferred by the owner shall not be eligible for a new farm tobacco allotment for the kind transferred during the 5 years following the year in which such transfer is made.

(11) *Transfer of history acreage.* Permanent transfer of allotment shall have the effect of transferring history acreage, farm base, and marketing quota attributable to such allotment. In the case of a transfer by lease, the transferred allotment shall be considered for purposes of establishing future allotments to have been planted on the farm from which such allotment was transferred.

(j) *Tobacco except burley, flue-cured, and cigar (types 54 and 55).* For tobacco that may be transferred in accordance with the provisions of paragraph (h) or (i) of this section, the following provisions shall also apply:

(1) *New farm allotment.* A new farm allotment shall not be transferred.

(2) *Tobacco allotment subject to an approved Conservation Reserve Program contract.* A transfer of allotment designated for reduction under a Conservation Reserve Program contract shall not be approved.

(3) *Subleasing prohibited.* A transfer of allotment from a farm shall not be approved during the period for which a current temporary transfer agreement is in effect that transferred quota to the same farm.

(4) *Limitation on transfer to and from a farm in the same year.* If a transfer agreement is in effect for the current crop year for a farm, a transfer of allotment shall not be approved during the same crop year:

(i) From such farm receiving allotment by transfer for such year, or

(ii) To such farm which had allotment transferred from it for such year.

(5) *Farm in violation.* If consideration of a violation is pending which may result in an allotment reduction for a farm for the current year, the county ASC committee shall delay approval of any transfer of allotment from or to the farm until the violation is cleared or the allotment reduction is made. However, if the allotment reduction in such case cannot be made effective for the current crop year before the final date for reducing allotments for violations, the transfer may be approved by the county ASC committee. In any case, if, after a transfer of a tobacco acreage allotment

has been approved by the county ASC committee, it is determined that the allotment for the farm from which or to which such acreage is transferred is to be reduced for a violation, the allotment reduction for such farm shall be delayed until the following year.

(6) *Claim for tobacco marketing quota penalty.* A transfer of acreage allotment from a farm shall not be approved if a claim has been filed against the lessor, seller, or transferring owner for a tobacco marketing quota penalty and the claim remains unpaid. However, this provision shall not apply if the claim is paid or the entire proceeds of the lease or sale of the allotment are applied against the claim and the county ASC committee determines that the amount paid for the lease or sale represents a reasonable price for the acres of allotment being transferred.

(7) *Approval after review period.* A transfer of allotment shall not be approved by the county ASC committee for any farm before the time of filing an application for review, as shown on the original allotment notice for the farm, has expired. If an application for review is filed for a farm involved in a transfer agreement, such agreement shall not be approved by the county ASC committee until the allotment for such farm is finally determined pursuant to part 711 of this chapter.

(8) *Acreage allotment after lease and transfer.* The acreage allotment determined after a temporary transfer for a farm under the provisions of this section shall be the allotment of such farm for the current year only for the purpose of determining:

(i) Excess acreage,

(ii) The amount of penalty to be collected on marketings of excess tobacco including absorption of carryover penalty tobacco,

(iii) Eligibility for price support, and

(iv) The farm marketing quota and the percentage reduction for a violation in the allotment for the farm.

(9) *Cancellation of transfer.* Any transfer of allotment under this section which was approved by the county ASC committee in error or on the basis of incorrect information furnished by the parties to the agreement shall be canceled by the county ASC committee. Such cancellation shall be effective as of the date of approval for purposes of determining eligibility for price support and marketing quota penalties except that such cancellation shall not be effective for the current marketing year for price support and marketing quota penalty purposes, if:

(i) The transfer approval was made in error or on the basis of incorrect

information unknowingly furnished by the parties to the transfer agreement; and

(ii) The parties to the transfer agreement were not notified of the cancellation before the tobacco was planted.

(10) *Dissolution or revision.* A transfer agreement may be dissolved or minor revisions made where a request by all parties to the agreement is made in writing to the county ASC committee. Such written notification shall be filed prior to planting the tobacco. A late filed request to dissolve or revise the transfer may be effective for the current year if the county ASC committee with approval of a representative of the State ASC committee determines that the producer was prevented from timely filing for reasons beyond such producer's control.

(11) *Reconstituted farm.* The allotment for a farm being divided or combined in the current year shall be the allotment after the transfer has been approved. Notwithstanding the above, in the case of a division, the county ASC committee shall allocate the acreage that was transferred by lease to the tracts involved in the division as the parent farm owners and operators designate in writing. In the absence of such designation, the county ASC committee shall apportion the leased acreage.

(12) *Consent of lien holder.* A transfer of allotment other than by annual lease shall not be approved from a farm subject to a mortgage or other lien unless the transfer is agreed to in writing by the lien holder.

§ 723.217 Release and reapportionment of old farm acreage allotments for Cigar-filler and Binder (types 42, 43, 44, 54, and 55) tobacco.

(a) *Annual or permanent release of acreage allotments to State committee.* Except as provided in this paragraph, all or any part of a farm acreage allotment on which Cigar-filler and Binder (types 42, 43, 44, 54, and 55) tobacco will not be produced and which the operator of the farm voluntarily releases on an annual basis, or both the owner and operator voluntarily releases on a permanent basis, in writing to the State ASC committee by not later than the final date for filing releases established by the State ASC committee for the current year shall be deducted from the allotment of such farm.

(1) For the farm voluntarily releasing tobacco farm acreage allotment on an annual basis, such acreage will be considered as having been planted on the releasing farm for the purpose of establishing allotments for subsequent years. For the farm receiving such

annual released acreage, such acreage shall not be taken into account in establishing future allotments for the farm. The tobacco history acreage for a farm releasing on a permanent basis shall not be taken into account in establishing future allotments for the farm. The tobacco history acreage for a farm releasing on a permanent basis shall be adjusted to reflect the acreage permanently released.

(2) An acreage allotment shall not be released either annually or permanently:

(i) From the eminent domain allotment pool if an application for transfer from the pool has been filed in accordance with part 719 of this chapter;

(ii) From a new farm; or

(iii) To the extent such acreage is designated for reduction under a Conservation Reserve Program contract.

(b) *Reapportionment of released acreage allotment.* The acreage voluntarily released on an annual or permanent basis for the current year may be reapportioned by the State ASC committee to any farm in any county in the State including a farm receiving a new farm allotment. The State ASC committee shall select the counties to which the released acreage will be reapportioned. The county ASC committee shall select the farms to which the released acreage will be reapportioned. The State ASC committee shall keep records on both an annual and permanent basis of the source of acreage released. Any acreage released for the current year on a permanent basis which is not reapportioned by the State ASC committee in the current year may be reapportioned in the following year. The county ASC committee for the county receiving released acreage may reapportion the tobacco allotment acreage on an annual or permanent basis to other farms in the county in amounts determined by the county ASC committee to be fair and reasonable on the basis of land, labor, and equipment available for production of Cigar-filler and binder (types 42, 43, 44, 54, and 55) tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco. Released acreage should not be reapportioned on a temporary or permanent basis to any farm unless there is assurance from the operator to the county ASC committee that the released acreage being received will be produced. Allotment reapportioned to a farm on an annual basis can only be used by the receiving farm for increased production during the current year. Allotment reapportioned to a farm on a permanent basis shall be added to the current year allotment or shall serve to establish an allotment for

a farm without a current allotment. A farm shall be eligible to receive reapportionment of released acreage on either or both an annual or permanent basis only if a written request is filed by the farm owner or operator at the office of the county ASC committee not later than the final date for filing such requests established by the State ASC committee for the current year.

§ 723.218 Determining tobacco history acreage.

With respect to each respective kind of tobacco, the tobacco history acreage shall be determined for each farm for which a tobacco acreage allotment was established for such kind of tobacco for the current year.

(a) The history acreage shall be the same as the farm acreage allotment for the respective kind of tobacco if in the current year, or either of the two preceding years, the sum of the planted and considered planted acreage of such kind of tobacco was as much as 75 percent of the farm acreage allotment. Otherwise, the history acreage shall be the sum of the planted and considered planted acreage of such kind of tobacco.

(b) Notwithstanding any other provision of this section, for the respective kind of tobacco, the history acres for the current year and for each year of the base period shall be reduced to zero if:

(1) A new farm allotment was canceled;

(2) The allotment was in a pool established in accordance with the eminent domain provision of part 719 of this chapter and the period of eligibility has expired for transferring the allotment from the pool; or

(3) The county ASC committee determines that the farm has been retired from agricultural production and the allotment is not eligible for pooling in accordance with the eminent domain provisions of part 719 of this chapter.

§ 723.219 Forfeiture of burley tobacco marketing quota.

(a) *Determination of quota subject to forfeiture.* (1) For purposes of paragraph (b) of this section, the phrase "owns a farm" means ownership of:

(i) A farm as constituted under part 719 of this chapter, if the entire farm shares a common ownership; or

(ii) All of the land within a farm which shares a common ownership if the parent farm consists of tracts of land having separate ownerships.

(2) For purposes of paragraph (b) of this section, the county ASC committee shall apportion, in accordance with the provisions of part 719 of this chapter, the burley tobacco quota assigned to a farm

between the various tracts of land which are separately owned by:

(i) A person not using the land on the farm for which a burley tobacco marketing quota is established for agricultural purposes.

(ii) A person who uses the land on the farm for which the burley tobacco marketing quota is established for agricultural purposes or for educational, instructional, or demonstrational purposes.

(3) The farm marketing quota determined under this section for each farm or tract, as applicable, shall be the amount of quota subject to forfeiture under this section.

(b) *Person who does not use the land on the farm for which the marketing quota is established for agricultural purposes or does not use such marketing quota for educational, instructional, or demonstrational purposes.* For purposes of this paragraph, the term "person" means a person as defined in part 719 of this chapter, including any governmental entity, public utility, educational institution, religious institution or joint venture (but not including any farming operation involving only spouses), but excluding any individual.

(1) *Required forfeiture.* With respect to any person owning a farm for which a burley tobacco marketing quota is established, if the county ASC committee determines that such person does not use the land on such farm for agricultural purposes, or does not use such burley tobacco marketing quota for educational, instructional, or demonstrational purposes, such person shall forfeit such quota which is not sold on or before December 1 of the year after any year for which the county ASC committee makes such determination.

(2) *Agricultural purposes.* Land on the farm for which a burley tobacco marketing quota is established shall be considered to be used for agricultural purposes if the county ASC committee determines that:

(i) In the current year or either of the 2 preceding years such land is used for the production of:

- (A) Row crops of any type;
- (B) Livestock or poultry (including pasture and forage for livestock);
- (C) Trees (including orchards and vineyards); or
- (D) Hay or native grasses on open land; or

(ii) In the current year such farm is owned by an educational institution which uses such burley tobacco marketing quota solely for educational, instructional, or demonstrational purposes.

(3) *Documentation.* Within 30 days after a written request is made by the

county ASC committee, or within such extended time as may be granted by the county ASC committee, a person must submit such documentation as may be requested to support a determination that the provisions of paragraph (b)(1) of this section have been met with respect to such person. Upon failure of such person to timely respond to this request, the county ASC committee shall determine that the person does not use the land on the farm for agricultural purposes, or does not use the burley tobacco marketing quota for educational, instructional, or demonstrational purposes.

(c) *Buyer of quota fails to share in the risk of production—(1) Forfeiture required.* If any person buys burley tobacco quota and such person fails to share in the risk of producing the tobacco which was planted subject to such quota during any of the 5-crop years beginning with the crop year for which the purchase became effective, such person shall forfeit the purchased quota if it is not sold on or before December 31 of the year after the crop year in which such crop was planted.

(2) *Failure to utilize purchased quota.* The failure to utilize purchased burley tobacco quota for the production of tobacco shall not result in the forfeiture of such quota, but the 5-year period which is specified in paragraph (c)(1) of this section shall be extended 1 year for each year in which the quota is not utilized.

(3) *Reduction for failure to share in the risk of production.* The effective quota shall be reduced, but not below zero pounds, for leasing and marketing quota purposes only, to the extent of the purchased quota for each crop after the crop year in which the buyer of such quota fails to share in the risk of producing a crop of tobacco which is subject to such quota.

(4) *Determining forfeited amount.* If only part of the quota on a farm is attributable to a purchased quota, the amount of the farm marketing quota which must be forfeited under paragraph (c) of this section shall be determined by increasing or decreasing each respective purchase of farm marketing quota for the farm to reflect changes in national quota factors since the purchase occurred and subtracting the pounds of quota which have been sold to prevent forfeiture.

(d) *Hearing.* Before any forfeiture of quota becomes effective under the provisions of this section, the county ASC committee shall:

(1) Schedule a hearing for the affected person.

(2) Notify the affected person of the hearing at least 10 days in advance of the hearing.

(3) Make a determination, on the basis of the evidence presented at the hearing by or on behalf of the affected person and by or on behalf of the county ASC committee as to whether or not:

(i) Any of the conditions for forfeiture specified in this section exist; and

(ii) The affected person knowingly failed to take steps to prevent forfeiture of allotment and quota when such forfeiture conditions have been determined to exist with respect to the provisions of paragraph (b) of this section.

(4) Notify the affected persons of the county ASC committee determination and, if forfeiture of quota is to be required, afford such person an opportunity to appeal to a review committee in accordance with the provision of part 711 of this chapter.

(e) *Apportionment of data and determination of quota after forfeiture—*

(1) *Apportionment of data.* The pounds of farm marketing quota retained on the forfeiting farm after the forfeiture shall be divided by the farm marketing quota established for the farm before the forfeiture to determine a factor for apportioning farm data. The data to be retained on the forfeiting farm shall be determined by multiplying the factor by the following data for the forfeiting farm, the:

(i) Overmarketings which have been subtracted when determining the effective farm marketing quota of the forfeiting farm.

(ii) Pounds of quota transferred from the forfeiting farm by lease or by the owner in the current year.

(iii) Pounds of quota reduced in the current year for a marketing quota violation in a prior year.

(iv) Previous year's effective farm marketing quota.

(v) Previous year's marketings.

(vi) Previous year's farm marketing quota.

(vii) Pounds of quota transferred to the farm by lease or by owner in the previous year.

The portion of the forfeiting farm data which shall be included in a forfeiture pool for the county shall be determined by subtracting the pounds of each respective item of farm data which are retained on the forfeiting farm from the pounds of the respective item of data which were established for the forfeiting farm before forfeiture.

(2) *Forfeiture pool.* The data for the forfeiture pool shall be added to any previous data in the forfeiture pool.

(3) *Quota after forfeiture.* After adjustment of data, the effective farm marketing quota shall be determined in accordance with the provisions of § 723.206 of this part for the forfeiting farm.

(f) *Forfeiture pool.*—(1) *Establishing forfeiture pool.* A forfeiture pool shall be established in each county in which a forfeiture of quota occurs. The forfeiture pool shall be increased to include data for each forfeiture and shall be decreased for each reallocation in order to reflect any forfeited or reallocated amounts of the:

(i) Farm marketing quota for the current year.

(ii) Quota reduced for marketing quota violations.

(iii) Quota transferred from the forfeiting farm by lease or by the owner.

(iv) Previous year's effective farm marketing quota.

(v) Previous year's marketings.

(2) *Adjustment of data in forfeiture pool.* At the beginning of the current year, the data in the forfeiture pool shall be adjusted by the factor used in determining quotas for old farms. Quota data in the forfeiture pool shall be decreased each time any burley tobacco quota is reallocated from the forfeiture pool. Such decrease in the quota data will be made in the same proportion as the pounds of quota which are reallocated from the pool are to the pounds of quota which were in the pool before the reallocation.

(g) *Reallocation of quota from forfeiture pool.*—(1) *Application.* In order to establish eligibility to receive quota from the forfeiture pool in the current year, an application must be made on a form approved by the Deputy Administrator. Such application must be filed:

(i) *Who may file.* By an active producer.

(ii) *When to file.* On or before April 30. The State ASC committee may establish an earlier date if notice of such earlier date is given in time for interested applicants to file an application by the earlier date.

(iii) *Where to file.* At the county ASCS office which serves the farm for which the application is filed.

(2) *Eligibility of applicant.* In order for an applicant to be eligible for quota from the forfeiture pool, the county ASC committee must determine that:

(i) The application was filed timely.

(ii) The applicant is an active tobacco producer.

(iii) During the current year or during the 4 years preceding the current year, the applicant has not sold or forfeited quota from any farm.

(3) *Time to reallocate.* The county ASC committee shall:

(i) Not reallocate any quota from the forfeiture pool until the time has passed for filing an application for forfeited quota for the current year.

(ii) Reallocate any quota from the forfeiture pool only during the 30-day period beginning on the day after the final day for filing an application for quota from the forfeiture pool.

(4) *Reallocation by county ASC committee.* Reallocation of any burley tobacco quota shall be made by the county ASC committee. In making its determination of the amounts of quota to reallocate, the county ASC committee may consider the size of the current quotas on the farms of the eligible applicants, the length of time the applicants have been farming tobacco, the type of farming done by the applicants (i.e., livestock, grain, or other commodities), previous leasing history of the applicants, and such other factors which in the judgment of the county ASC committee should be considered. A burley tobacco quota may be reallocated to a farm which currently does not have a burley tobacco quota. A factor shall not be used to reallocate quota between all eligible applicants.

(5) *Basis for reallocation from forfeiture pool.* Reallocation from the forfeiture pool shall be on the basis of pounds of farm marketing quota.

(6) *Amount of quota to be reallocated.* The county ASC committee may reallocate all or part of the quota in the forfeiture pool. The minimum amount of quota which may be reallocated to an eligible applicant is the total amount of quota in the pool or 100 pounds, whichever is less. The maximum amount is 500 pounds. However, up to 1,500 pounds may be allocated with State ASC committee concurrence.

(7) *Data for receiving farm.* All data for the forfeiture pool shall be apportioned to the receiving farm in the proportion that the reallocated farm marketing quota is to the total farm marketing quota in the forfeiture pool before the reallocation. The data determined for the receiving farm in accordance with the provisions of this paragraph shall be added to any previous data for the receiving farm.

(8) *Quota for receiving farm.* After any adjustments which are made in accordance with the provisions of this section, the effective farm marketing quota shall be determined for the receiving farm.

(h) *Forfeiture of reallocated quota.* Any burley tobacco quota which is reallocated in accordance with the provisions of this section shall be forfeited if the applicant to whom the

quota is reallocated fails to share in the risk of producing a crop of tobacco which is subject to such quota during any of the 5 years beginning with the crop year during which the quota is reallocated. The amount of farm marketing quota which must be forfeited shall be determined in the same manner which is specified in paragraph (c)(4) of this section with respect to the forfeiture of purchased quota. Any forfeiture of quota shall occur on December 1 of the year in which the applicant fails to share in the risk of production of tobacco which is produced subject to such quota. While the failure to utilize a quota shall not subject the quota to forfeiture, the 5-year period which is specified in this paragraph shall be extended by a year for each year in which the allotment and quota is not utilized.

(i) *Successor-in-interest.* A successor-in-interest shall be subject to the provisions of this section in the same manner and to the same extent as would be applicable to the person whose interest has been assumed by such successor-in-interest.

(1) *New owner of farm.* The new owner of a farm on which a portion or all of the farm marketing quota for such farm was either purchased and/or was reallocated from forfeited quota shall become the successor-in-interest to the previous owner of the farm. However, if a farm is acquired by a new owner on or before June 30 of the current crop year and such owner would otherwise be required to sell or forfeit the farm marketing quota because in the preceding crop year the owner of such quota did not share in the risk of producing a crop of tobacco which was subject to such purchased or reallocated quota, the new owner may be considered the buyer of the quota instead of being considered as a successor-in-interest to the previous owner of the farm. However, the new owner must furnish to the county ASC committee on or before June 30 of the current year a certification that such owner intends to become an active burley tobacco producer. Any purchased or reallocated quota, which is acquired by a new owner who is not considered to be the buyer of the quota in accordance with the provisions of this paragraph, shall be subject to the same terms and conditions with respect to forfeiture which would be applicable if the new owner actually had purchased the quota at the time the farm was acquired.

(2) *Buyer no longer shares in risk of production.* The owner of a farm shall become the successor-in-interest to the

buyer of burley tobacco quota which was transferred to a farm but which was not owned by such buyer if the buyer ceases to share in the risk of production of burley tobacco produced on the farm.

§ 723.220 Forfeiture of flue-cured tobacco acreage allotment and marketing quota.

(a) *Determination of allotment and quota subject to forfeiture.* (1) For purposes of paragraphs (b) and (c) of this section, the phrase "owns a farm" means ownership of:

(i) A farm as constituted under part 719 of the chapter if the entire farm shares a common ownership; or

(ii) All of the land within a common ownership if the parent farm consists of separate ownership tracts of land.

(2) For purposes of paragraphs (b) and (c) of this section, the county ASC committee shall, in accordance with the provisions of part 719 of this chapter, apportion the flue-cured tobacco acreage allotment and marketing quota assigned to a farm between:

(i) All land which is owned by any person which is not significantly involved in the management or use of land for agricultural purposes, as described in paragraph (b) of this section; and

(ii) Each common ownership tract of land in the farm other than that described in paragraph (a)(2)(i) of this section.

(3) With respect to the provisions of paragraph (c) of this section, an acreage allotment and marketing quota shall be determined for a tract in accordance with paragraph (a)(2)(ii) of this section only to the extent that records are available to show the contribution which the tract made to the flue-cured tobacco acreage allotment of the parent farm.

(4) The farm acreage allotment and farm marketing quota determined under this section for each farm or tract, as applicable, will be the amount of allotment and quota subject to forfeiture under this section.

(b) *Persons not significantly involved in management or use of land for agricultural purposes.* For purposes of this paragraph, the term "person" means a person as defined in part 719 of this chapter, including any: Governmental entity; public utility; educational institution; or religious institution, but not including any: Individual; partnership; joint venture; family farm corporation; trust; estate, or similar fiduciary account with respect to which 50 percent or more of the beneficial interest is in one or more individuals; or educational institution that uses a flue-cured tobacco acreage allotment and

marketing quota for instruction or demonstrational purposes.

(1) *Required forfeiture.* If at any time the county ASC committee determines that any person which owns a farm for which a flue-cured tobacco acreage allotment and marketing quota are established is not significantly involved in the management or use of land for agricultural purposes, such person shall forfeit such allotment and quota which is not sold on or before December 1 of the year for which the county ASC committee makes such a determination.

(2) Owner ceases to be significantly involved. A person shall be considered to be significantly involved in the management or use of land for agricultural purposes if the county ASC committee determines that:

(i) For the 3 preceding years, more than 20 percent of the gross income of the person has been derived from the management or use of land for the production of crops which are planted and harvested annually, and/or livestock, including pasture and forage for livestock; and

(ii) Any other person or all other persons which in combination own more than 50 percent of the assets of the owner of the flue-cured tobacco allotment and marketing quota also meet the criteria specified in paragraph (b)(2)(i) of this section.

(3) *Documentation.* Within 30 days after a written request is made by the county ASC committee, or within such extended time as may be granted by the county ASC committee, a person must submit such documentation as may be requested to support a determination that the provisions of paragraph (b)(2) of this section have been met with respect to such person. Upon failure of such person to timely respond to such request, the county ASC committee shall determine that the person is not significantly involved in the management or use of land for agricultural purposes.

(c) *Flue-cured tobacco farm acreage allotment exceeds 50 percent of tillable cropland.* If any person owns a farm for which the flue-cured tobacco farm acreage allotment assigned to the land owned by the person exceeds 50 percent of the tillable cropland on such farm, the person shall take steps, such as the sale of allotment, the purchase of tillable cropland, or conversion of land to tillable cropland status, which will result in the elimination of the excess or the person shall forfeit flue-cured tobacco farm acreage allotment equal to the amount of such excess that remains on or after;

(1) July 1 of the year, after the year of acquisition, if the farm was acquired after December 1, 1983.

(2) July 1 of the year after the crop year for which the change(s) become effective, for increases in allotment resulting from changes in national acreage or national yield factors.

(3) July 1 of the year after the year in which the farm owner disposes of an acreage of tillable cropland or changes the status of land in the farm so as to cause such land to lose its tillable cropland status.

(d) *Farm includes purchased allotment.* If a farm includes purchased allotment, notwithstanding the provisions of paragraph (c)(1) of this section, when the flue-cured tobacco farm acreage includes acreage of purchased allotment and the flue-cured tobacco farm acreage allotment exceeds 50 percent of the tillable cropland because the owner disposed of an acreage of tillable cropland after purchasing the allotment, the forfeiture shall not take place until July 1 of the year after the year of such disposal.

(e) *Buyer of allotment fails to share in risk of production—(1) Forfeiture required.* If any person buys a flue-cured acreage allotment and quota under the provisions of § 723.216 of this part and such person fails to share in the risk of producing the tobacco which was planted under such allotment and quota during any of the 5-crop years beginning with the crop year for which the purchase became effective, such person shall forfeit the purchased allotment and quota which is not sold on or before December 31 of the year after the crop year in which such crop was planted.

(2) *Fails to utilize purchased allotment and quota.* Failure to utilize purchased allotment and quota for the production of tobacco shall not subject such allotment and quota to forfeiture, but the 5-year period of paragraph (e)(1) of this section shall be extended 1 year for each year in which the allotment and quota is not utilized.

(3) *Reduction for failure to share in risk of production.* The effective allotment and quota shall be reduced, but not below zero acres or pounds, for planting, leasing, and marketing quota purposes only, to the extent of purchased allotment and quota for each crop year after the crop year in which the buyer of such allotment and quota fails to share in the risk of producing a crop of tobacco planted under such allotment and quota.

(4) *Determining forfeited amount.* If only part of the allotment and quota on a farm resulted from purchased allotment or quota, the amount of farm

marketing quota which must be forfeited under paragraph (e) of this section shall be determined by:

(i) Increasing or decreasing each respective purchase of farm marketing quota for the farm to reflect any annual changes in national acreage and national yield factors subsequent to the year of purchase.

(ii) Adding the amounts determined in paragraph (e)(4)(i) of this section, multiplying the result by the farm yield for the farm, and subtracting the pounds of quota which have been sold to prevent forfeiture.

(f) *Tobacco not planted nor considered planted.* Notwithstanding any other provision of this part, any person who owns a farm for which a flue-cured tobacco acreage allotment and marketing quota are established, shall forfeit such allotment and quota after February 15 of any year immediately following the 1st year of the 3-year period immediately preceding the year for which the county ASC committee determines that flue-cured tobacco was not planted nor considered planted on such farm during at least 2 years of such 3-year period.

(g) *Hearing.* Before any forfeiture of allotment and quota becomes effective under the provisions of this section, the county ASC committee shall:

(1) Schedule a hearing for the affected person.

(2) Notify the affected person of the hearing at least 10 days in advance of the hearing.

(3) Make a determination, on the basis of evidence presented at the hearing by or on behalf of the affected person and by or on behalf of the county ASC committee as to whether:

(i) Any of the conditions of requiring forfeiture as specified in this section exist; and

(ii) The affected person knowingly failed to take steps to prevent forfeiture of a flue-cured tobacco acreage allotment and marketing quota.

(4) Notify the affected person of the county ASC committee determination and, if forfeiture of allotment and quota is to be required, afford such person an opportunity to appeal to a review committee under the provision of part 711 of this chapter.

(5) Wait until the period has passed for the affected person to appeal the county ASC committee or review committee determination that allotment and quota must be forfeited under the provisions of this section.

(h) *Apportionment of data and determination of allotment and quota after forfeiture.*—(1) *Apportionment of data.* The pounds of farm marketing quota retained on the forfeiting farm

after the forfeiture shall be divided by the farm marketing quota established for the forfeiting farm before the forfeiture to determine a factor for apportioning farm data for the current year and for the base period. The data to be retained on the forfeiting farm shall be determined by multiplying the factor by the following data of the forfeiting farm, the:

(i) Planted and considered planted acres for the base period.

(ii) History acres for the base period.

(iii) Farm acreage allotment for the base period.

(iv) Overmarketings which have not been subtracted when determining the effective farm marketing quota of the forfeiting farm.

(v) Acres of allotment reduced in the current year for a marketing quota violation in a prior year.

(vi) Previous year's effective farm marketing quota.

(vii) Previous year's marketings.

(viii) Previous year's farm marketing quota.

(ix) Pounds of quota transferred from the forfeiting farm by lease in the current year.

(x) Pounds of quota transferred to the farm by lease in the previous year.

The portion of the forfeiting farm data which shall be included in a forfeiture pool for the county shall be determined by subtracting the acres or pounds which are retained on the forfeiting farm from the acres or pounds established for the forfeiting farm before forfeiture.

(2) *Forfeiture pool.* The data for the forfeiture pool shall be added to any previous data in the forfeiture pool.

(3) *Allotment and quota after forfeiture.* After adjustment of data, the effective farm acreage allotment and the effective farm marketing quota shall be determined in accordance with §§ 723.205 and 723.206 of this part, respectively, for the forfeiting farm.

(i) *Forfeiture pool.*—(1) *Establishing forfeiture pool.* A forfeiture pool shall be established in each county in which a forfeiture of allotment and quota occurs. The forfeiture pool shall be increased to include data for each forfeiture and shall be decreased for each reallocation in order to reflect any forfeited or reallocated amounts of the:

(i) Farm acreage allotment for the current year and for the base period.

(ii) Farm marketing quota for the current year and for the base period.

(iii) Acres reduced for violation.

(iv) Planted and considered planted acres for the base period.

(v) History acres for the base period.

(vi) Previous year's effective farm marketing quota.

(vii) Previous year's marketing.

(viii) Quota transferred from the forfeiting farm by lease.

(2) *Yield for forfeiture pool.* The farm yield for the forfeiture pool shall be determined by dividing the farm marketing quota in the forfeiture pool by the farm acreage allotment in the forfeiture pool. The preliminary farm yield for the forfeiture pool shall be determined by dividing the farm yield by the national yield factor.

(3) *Adjustment of data in forfeiture pool.* At the beginning of the current year, the data in the forfeiture pool shall be adjusted by the factors used in determining yields, allotments, and quotas for old farms. Acreage and quota data in the forfeiture pool shall be decreased each time quota is reallocated from the forfeiture pool, such decrease to be made in the same proportion as the pounds of quota which are reallocated from the pool are to the pounds of quota which were in the pool before the reallocation.

(j) *Reallocation of allotment and quota from forfeiture pool.*—(1) *Application.* In order to establish eligibility to receive allotment and quota from the forfeiture pool in the current year, an application must be made on a form approved by the Deputy Administrator. Such application must be filed:

(i) *Who may file.* By an active producer.

(ii) *When to file.* On or before March 31. The State ASC committee may establish an earlier date if notice of such earlier date is given in time for interested applicants to file an application by the earlier date.

(iii) *Where to file.* At the county ASCS office which serves the farm for which the application is filed.

(2) *Eligibility of applicant.* In order for an applicant to be eligible for allotment and quota from the forfeiture pool, the county ASC committee must determine that:

(i) The application was filed timely.

(ii) The applicant is an active producer.

(iii) During the current year or during the 4 years preceding the current year, the applicant has not:

(A) Sold or forfeited allotment and quota from any farm.

(B) Used the designation method of division to retain less allotment than the farm would have retained by another method of division.

(3) *Time to reallocate.* The county ASC committee shall:

(i) Not reallocate any allotment and quota from the forfeiture pool until the time has passed for filing an application

for forfeited allotment and quota for the current year.

(ii) Reallocate any allotment and quota from the forfeiture pool only during the 30-day period beginning on the day after the final day for filing an application for allotment and quota from the forfeiture pool.

(4) *Reallocation by county ASC committee.* Reallocation of any allotment and quota shall be made by the county ASC committee. In making its determination of the amounts to reallocate, the county ASC committee may consider the size of the current allotments on the farms of the eligible applicants, the length of time the applicants have been farming tobacco, the type of farming done by the applicants (i.e., livestock, grain, or other commodities), and other factors which in the judgment of the county ASC committee should be considered. Allotment and quota may be reallocated to a farm which currently does not have a flue-cured tobacco allotment. A factor shall not be used to reallocate allotment and quota between all eligible applicants.

(5) *Basis for reallocation from forfeiture pool.* Reallocation from the forfeiture pool shall be on the basis of pounds of farm marketing quota.

(6) *Amount of quota to reallocate.* The county ASC committee may reallocate all or part of the quota in the forfeiture pool.

(i) *Minimum.* The minimum amount of quota which may be reallocated to an eligible applicant is the total amount of quota in the pool or 200 pounds, whichever is less.

(ii) *Maximum.* The maximum amount of quota which may be reallocated to an eligible applicant is 1,000 pounds. However, with State ASC committee approval, up to 2,500 pounds may be allocated.

(7) *Data for receiving farm.* All data for the forfeiture pool shall be apportioned to the receiving farm in the proportion that the reallocated farm marketing quota is to the total farm marketing quota in the forfeiture pool before the reallocation. The pounds of farm marketing quota reallocated to a farm shall be divided by the farm yield for the farm to determine the amount of reallocated farm acreage allotment. The data determined for the receiving farm in accordance with the provisions of this paragraph shall be added to any previous data for the receiving farm.

(8) *Allotment and quota for receiving farm.* After any adjustments which are made in accordance with the provisions of this section, the farm acreage allotment, the effective farm acreage allotment, and the effective farm

marketing quota shall be determined for the receiving farm according to §§ 723.205 and 723.206, respectively, of this part.

(k) *Forfeiture of reallocated allotment and quota.* Allotment and quota which is reallocated to a farm under the provisions of this section shall be forfeited if the applicant to whom the allotment and quota is reallocated fails to share in the risk of production of tobacco produced under such allotment and quota during any of the 5 years beginning with the crop year during which the allotment and quota is reallocated. The amount of farm marketing quota which must be forfeited shall be determined in the same manner as is provided in paragraph (e)(4) of this section for forfeiture of purchased quota. Forfeiture shall occur on December 1 of the year in which the applicant fails to share in the risk of production of tobacco which is produced under such allotment and quota. While the failure to utilize such allotment and quota shall not subject such allotment and quota to forfeiture, the 5-year period, as provided for in this paragraph, shall be extended by a year for each year in which the allotment and quota is not utilized.

(l) *Successor-in-interest.* The successor-in-interest shall be subject to the provisions of this section in the same manner and to the same extent as would be applicable to the person whose interest was assumed.

(1) *New owner.* The new owner of a farm on which a portion or all of the farm acreage allotment and farm marketing quota for such farm was either purchased and/or was reallocated from forfeited allotment and quota shall become the successor-in-interest to the previous owner of the farm. However, if a farm is acquired by a new owner on or before June 15 of the current crop year and such owner would otherwise be required to sell or forfeit the farm acreage allotment and farm marketing quota because in the preceding crop year the owner of such allotment and quota did not share in the risk of producing a crop of tobacco which was subject to such purchased or reallocated allotment and quota, the new owner may be considered the buyer of the allotment and quota instead of being considered as a successor-in-interest to the previous owner of the farm. However, the new owner must furnish to the county ASC committee on or before June 15 of the current year a certification that such owner intends to become an active flue-cured tobacco producer. Any purchased or reallocated allotment and quota, which is acquired by a new owner who is considered to be the buyer of the allotment and quota in

accordance with the provisions of this paragraph, shall be subject to the same terms and conditions with respect to forfeiture which would be applicable if the new owner actually had purchased the allotment and quota at the time the farm was acquired.

(2) *Buyer no longer shares in risk of production.* The owner of a farm shall become the successor-in-interest to the buyer of allotment and quota which was transferred to a farm but which was not owned by such buyer if the buyer ceases to share in the risk of the production of tobacco produced on the farm.

Subpart C—Tobacco Subject to Quota, Exemptions From Quotas, Marketing Cards, and General Penalty Provisions

§ 723.301 Identification of tobacco subject to quota.

(a) Except as provided in paragraphs (b) and (c) of this section, any tobacco which is determined by a representative of the State ASC committee or county ASC committee to have the same appearance and characteristics as a kind of tobacco for which marketing quotas are in effect shall be deemed to be a quota kind of tobacco. Such tobacco shall continue to be deemed a quota kind of tobacco unless it has been certified by the Agricultural Marketing Service, U.S. Department of Agriculture, under the Tobacco Inspection Act (7 U.S.C. 511) and implementing regulations (7 CFR part 30), prior to removal of the tobacco from the State where it was produced, as a kind of tobacco not subject to marketing quotas.

(b) Any kind of tobacco for which marketing quotas are not in effect that is produced in a State where marketing quotas are in effect for any kind of tobacco shall be subject to the quota for the kind of tobacco for which marketing quotas are in effect in that State. If marketing quotas are in effect in a State for more than one kind of tobacco, nonquota tobacco produced in the State shall be subject to the quota for the kind of quota tobacco produced in the State having the highest price support under the Agricultural Act of 1949.

(c) Paragraph (b) of this section shall not apply to:

(1) Maryland (type 32) tobacco when it is nonquota tobacco and produced on a farm for which a marketing quota for Maryland (type 32) tobacco was established when marketing quotas for such kind of tobacco were last in effect (1965);

(2) Cigar-filler (type 41) tobacco when it is nonquota tobacco and produced in Pennsylvania;

(3) Cigar-wrapper (types 61 and 62) tobacco when it is nonquota tobacco and produced in Connecticut, Massachusetts, Georgia or Florida;

(4) Tobacco produced in a quota State that is represented to be nonquota tobacco and that is readily and distinguishably different from all kinds of quota tobacco, as determined by the Agricultural Marketing Service, U.S. Department of Agriculture, through application of the standards issued by the Secretary for the inspection and identification of tobacco. Such inspection and identification shall be made prior to removal of the tobacco from the State where it was produced; and

(5) Tobacco which is nonquota tobacco and produced in a quota area in which the total of the acreage allotments for quota tobacco established for farms is less than twenty acres.

§ 723.302 Tobacco for experimental purposes.

For farms on which tobacco is being grown for experimental purposes by or under the direction of a publicly owned agricultural experiment station, such tobacco shall be exempt from any penalties otherwise required by this part if, before the beginning of the harvesting of tobacco from any farm on which experimental tobacco is being grown, the director of such publicly owned agricultural experiment station furnishes a report, to the State Executive Director for the State in which the farm is located, that includes the following information:

(a) Name and address of the publicly owned agricultural experiment station.

(b) Name of the owner, and name of the operator if different from the owner, and the farm number of each farm on which tobacco is grown for experimental purposes only.

(c) The acreage of tobacco that is to be grown on each farm for experimental purposes only.

(d) A certification signed by the director of the publicly owned agricultural experiment station to the effect that such acreage of tobacco is being grown for each farm for experimental purposes only, the tobacco is being grown under the auspices of such director, and the acreage of each plot was considered necessary for carrying out the experiment.

§ 723.303 Production of registered or certified flue-cured tobacco seed.

Producers of registered or certified flue-cured tobacco seed may devote flue-cured tobacco acreage in excess of the effective allotment to seed production without such acreage of

tobacco causing a "No Price Support" entry on the marketing card issued for the farm if an agreement is signed by the farm operator, and the producer, if different from the operator, which provides:

(a) *Destruction prior to harvest.* For the destruction prior to harvest of all tobacco produced on the acreage designated for seed production.

(b) *Producer payment of compliance costs.* That the producers shall pay the cost of compliance visits to a farm by representatives of the county ASC committee for the purposes of:

(1) Designating and determining the acreage of seed production, and

(2) Determining that no tobacco has been harvested from the acreage designated for seed production and to witness destruction of tobacco leaves.

(c) *Agreement.* That the producer(s) signing the agreement shall agree to timely notify the county ASCS office when the tobacco seed has been harvested.

(d) *No history credit.* That the planting of the tobacco acreage for seed production will not create history acreage for the purpose of establishing future farm allotments.

(e) *Cancellation of marketing cards.* That if the county ASC committee determines that any of the terms and conditions of the agreement have been violated or any material misrepresentation has been made, any marketing card issued for the farm in recognition of the agreement shall be recalled and canceled, and a marketing card shall be issued to reflect that tobacco produced on the farm is not eligible for price support.

§ 723.304 Determination of discount varieties.

(a) *Definition.* "Discount Variety" means any of the flue-cured tobacco seed varieties designated as Coker 139, Coker 140, Coker 316, Reams 64, Reams 266, or Dixie Bright 244, or a mixture or strain of such seed varieties, or any breeding line of flue-cured tobacco seed varieties, including, but not limited to, 187-Golden Wilt (also designated by such names as No-Name, XYZ, Mortgage Lifter, Super XyZ), having the quality and chemical characteristics of the seed varieties designated as Coker 139, Coker 140, Coker 316, Reams 64, Reams 266, or Dixie Bright 244. However, where there is growing in a field offtype plants of not more than 2 percent, such offtype plants shall not be considered in certifying the flue-cured tobacco variety being produced. Flue-cured tobacco variety which is not certified to be discount variety shall be considered as "acceptable variety."

(b) *Producer report.* The operator, or any producer, on each farm producing flue-cured tobacco shall file with the county ASCS office a report on MQ-32 showing whether or not discount variety tobacco was planted on the farm.

(c) *Failure to file report.* If the operator of a farm on which flue-cured tobacco is being produced in the current year fails or refuses, within 7 days after a request of the county ASC committee on MQ-34-1, Notice of Action Required Regarding Determination of Seed Varieties of Flue-Cured Tobacco, to file a report on MQ-32, showing whether or not there was planted any of the discount varieties of flue-cured tobacco on such farm, all flue-cured tobacco produced on such farm shall be considered by the county ASC committee to be discount variety tobacco unless the county ASC committee finds that failure to comply with the request was due to circumstances beyond the control of the farm operator.

(d) *Notice to farm operator.* The farm operator having discount variety tobacco shall be given written notice by certified mail on MQ-34-2, Notice of Determination of Discount Variety of Flue-Cured Tobacco. This notice to the farm operator shall constitute notice to all persons who, as owner, operator, landlord, tenant, or sharecropper, are interested in the tobacco grown on the farm.

(e) *Producer's right to recertify.* Any producer on a farm who received a Form MQ-34-2 notifying such producer that the farm has discount variety tobacco when in fact an acceptable variety is being produced may recertify on Form MQ-32.

(f) *Issuance of marketing cards.* (1) If a farm is considered to have discount variety tobacco available for marketing and the farm is eligible for price support, the county ASCS executive director shall issue MQ-76, bearing the notation "Discount Variety-Limited Price Support." If the farm is considered to have discount variety tobacco but it is not eligible for price support, the county ASCS executive director shall issue MQ-76, bearing the notation "Discount Variety-No Price Support."

(2)(i) Where an MQ-76, bearing the notation, "Discount Variety-Limited Price Support" is issued for a farm, the card may be exchanged at the county ASCS office for an MQ-76, without the notation, or

(ii) Where an MQ-76, bearing the notation "Discount Variety-No Price Support" is issued for a farm the card may be exchanged at the county ASCS office for MQ-76 with the notation "No

Price Support." However, the farm operator shall establish to the satisfaction of the county ASC committee that there has been no commingling or substitution of discount variety tobacco produced on the farm or on any other farm operated by such operator, and that all discount variety tobacco has been marketed or satisfactorily disposed of, or accounted for.

(3) MQ-76 issued to identify marketings of tobacco grown for experimental purposes by or for publicly owned experiment stations shall bear the notation "Discount Variety-Limited Price Support" if such tobacco is discount variety tobacco.

(g) *Identification of flue-cured leaf account tobacco as acceptable variety—*

(1) Whenever the Director determines there is a significant amount of discount variety tobacco available for marketing in any marketing year, the Director may cause to be initiated the provisions of this paragraph. In addition, the Director may terminate any action initiated hereunder when it is determined that no discount variety of flue-cured tobacco remains available for sale during the remainder of the current marketing season. Notification to warehouse operators of action required under this paragraph shall be by the State ASCS executive director.

(2)(i) Each warehouse operator who offers for auction sale any leaf account flue-cured tobacco on a warehouse floor other than such operator's own floor, and who requests the other warehouse operator to identify such tobacco as being "acceptable variety" shall execute MQ-79-1 (Flue-Cured), Dealer's Certification-Resale Tobacco.

(ii) Each warehouse operator who is participating in the Commodity Credit Corporation price support program, and who identifies resale tobacco indicating that such tobacco with a "certified" lot ticket indicating that such tobacco is covered by an executed MQ-79-1.

(iii) Each executed MQ-79-1 (Flue-Cured) shall show the following information with respect to each lot of resale tobacco:

(A) Crop year.
(B) Name and address of warehouse where the tobacco is being offered for sale.

(C) Tobacco sale bill number and date.

(D) Date, signature of dealer and current address, and dealer identification number.

(3)(i) Each dealer or any other person who offers for auction sale any resale flue-cured tobacco on a warehouse floor which is participating in the Commodity Credit Corporation price support

program and on which floor eligible resale flue-cured tobacco is identified with a "certified" lot ticket, and who requests the warehouse operator to identify such operator's tobacco as being an "acceptable variety," shall execute MQ-79-1 (Flue-Cured), Dealer's Certification-Resale Tobacco.

(ii) Each executed MQ-79-1 (Flue-Cured) shall show the following information with respect to resale tobacco:

(A) Crop year.

(B) Name and address of warehouse where the tobacco is being offered for sale.

(C) Date, signature of dealer and current address and dealer identification number.

(D) Tobacco sale bill number and date.

(iii) Each dealer or any person who acquires acceptable variety tobacco in a manner which would make it eligible for certification on MQ-79-1, or who has on hand both discount variety tobacco and acceptable variety tobacco, and desires to dispose of acceptable variety tobacco prior to disposing of the discount variety tobacco, may apply in writing to the State ASCS executive director for a special authorization to have the acceptable variety tobacco certified when offered for auction sale.

(h) *Estimate of production.* For any farm on which discount variety tobacco is being grown, a Form MQ-92, Estimate of Production, shall be obtained.

§ 723.305 Issuance of marketing cards.

(a) *General.* Each marketing of tobacco from a farm in a quota area shall be identified by a valid marketing card unless prior to marketing an AMS certification is issued for such tobacco to indicate that such tobacco is a nonquota kind of tobacco.

(1) A marketing card (MQ-76 or MQ-77) shall be issued for the current marketing year for each farm having quota tobacco available for marketing. Cards shall be issued in the name of the farm operator except that:

(i) Cards issued for tobacco grown for experimental purposes only shall be issued in the name of the experiment station.

(ii) Cards issued to a successor-in-interest shall be issued in the name of the successor-in-interest.

(iii) For kinds of tobacco other than flue-cured and burley, if a part of a farm which includes the tobacco acreage on the farm is cash leased to such producer, cards shall be issued in the name of such producer. The face of the marketing card may show the name of other interested producers. A marketing card may be issued in the name of a producer

who is not the farm operator if the county ASC committee determines pursuant to the procedure in paragraph (a)(2) of this section that such producer has been or likely will be deprived of the right to use the marketing card issued for the farm to market such producer's proportionate share of the crop.

(2) If the county ASC committee has reason to believe that one or more producers on the farm have been or likely will be deprived of the right to use such marketing card to market such producer's proportionate share of the crop, a hearing shall be scheduled by the county ASC committee and the operator of the farm and the producer or producers involved shall be invited to be present, or to be represented, at which time they shall be given the opportunity to substantiate their claims concerning the use of the farm marketing card to market each such producer's proportionate share of the effective farm marketing quota for such crop. At least two members of the county ASC committee shall be present at the hearing. The hearing shall be held at the time and place named in the notice. A summary of the evidence presented at the hearing shall be prepared for use of the county ASC committee. If the farm operator or other producer(s) on the farm do not attend the hearing, or are not represented, the county ASC committee shall make its decision on the basis of information available to such committee. If the county ASC committee finds that any producer on the farm has been or likely will be deprived of the right to use the marketing card issued for the farm to market such producer's proportionate share of the crop, a separate marketing card shall be issued to such producer. With respect to burley and flue-cured tobacco, the marketing card issued for the farm shall be recalled and a separate marketing card, showing 103 percent of the producer's proportionate share of the effective farm marketing quota shall be issued to each such producer who it is determined has been or likely will be deprived of the opportunity to market such producer's proportionate share of the crop and another card (or other cards if considered preferable by the county ASC committee) shall be issued showing 103 percent of the effective farm marketing quota to enable the other producers on the farm to market their proportionate shares. The marketing cards issued pursuant to this subparagraph shall reflect the proportionate pounds, if any, already marketed by each producer.

(3) The procedure in paragraph (a)(2) of this section shall not apply to a person who was a producer on the farm in a prior year but who is not a producer in the current crop year.

(b) *Person authorized to issue marketing cards.* The county ASCS executive director shall be responsible for the issuance of marketing cards. For kinds of tobacco other than burley and flue-cured tobacco, each marketing card shall bear the actual or facsimile signature of the county ASCS executive director who issued the card.

(c) *Rights of producers and successors-in-interest.*—(1) Each producer having a share in tobacco available for marketing from a farm shall be entitled to the use of the marketing card for marketing such producer's proportionate share.

(2) Any person who succeeds, other than a dealer, in whole or in part to the share of a producer in the tobacco available for marketing from a farm, shall, to the extent of such succession, have the same right to the use of the marketing card and bear the same liability for penalties as the original producer.

(d) *No price support-burley and flue-cured tobacco.* For burley and flue-cured tobacco, the notation "No Price Support" shall be entered on each marketing card issued for the use of:

(1) *Farm.* The farm if any producer on the farm is ineligible for price support under the provisions of part 1464 of this title.

(2) *Producer.* The producer on a farm if the producer is ineligible for price support under the provisions of part 1464 of this title.

(e) *Farm quota data entered on marketing card and supplemental card for burley or flue-cured tobacco:*

(1) Any marketing card issued to market burley or flue-cured tobacco shall show when issued, in the space provided on the reverse side, the pounds computed by multiplying 103 percent times the effective farm marketing quota.

(2) Notwithstanding paragraph (e)(1) of this section, if the tobacco available for marketing from the farm is determined by the county ASC committee or the county ASCS executive director to be less than the effective farm marketing quota, for purposes of issuing a marketing card and showing thereon the farm's 103 percent of the effective quota, the effective farm marketing quota for the farm shall be considered to be the pounds determined to be available for marketing from the farm. If any producer on the farm satisfies the county ASC committee or county ASCS executive

director that the quantity of tobacco produced on the farm in the current year, plus any carryover tobacco from a prior year, is greater than the previously determined pounds of tobacco available for marketing from the farm, the pounds shown on the marketing card shall be increased accordingly, but not to exceed an amount which would cause the total pounds shown on the marketing card to equal 103 percent of the effective farm marketing quota.

(3) Upon request by the farm operator, a supplemental marketing card bearing the same name and identification as shown on the original marketing card may be issued for a farm upon return to the county ASCS office of an original marketing card or a supplemental marketing card. The pounds computed as the balance of 103 percent of quota from a prior marketing card shall be shown in the first space on the reverse side of the marketing card.

(4) Upon written request of the farm operator two or more marketing cards may be issued for a farm if the farm operator specifies the number of pounds of quota to be assigned to each marketing card. In such case, the total pounds of quota specified in the entry, "103 percent of quota," on all marketing cards issued for the farm may not exceed 103 percent of the effective farm marketing quota.

(f) *Farm quota data entered on marketing card and supplemental card for any kind of tobacco other than burley or flue-cured:*

(1) *Within quota marketing card.* A within quota marketing card, MQ-76, indicating the tobacco is eligible for price support shall be issued for use in identifying the kind of tobacco that is available for marketing from a farm when such tobacco:

(i) Is eligible for price support according to the provisions of part 1464 of this title.

(ii) Was grown for experimental purposes by a publicly owned agricultural experiment station.

(2) *Excess marketing card.* An excess marketing card (MQ-77) shall be issued for a farm for marketing a kind of tobacco that is ineligible for price support. Before the MQ-77 is issued the county ASCS executive director shall enter on such marketing card the rate of any penalty that is to be deducted from the proceeds from any marketing of tobacco identified by such marketing card. An MQ-77 shall be issued for each farm for each kind of tobacco for which:

(i) There is excess tobacco available for marketing from the farm; or

(ii) The producer is not an eligible producer or the tobacco is not eligible

tobacco as determined in accordance with part 1464 of this title.

(3) *Full penalty rate.* The full penalty rate shall be entered on each MQ-77 issued to identify tobacco produced on a farm for which:

(i) An acreage allotment was not established;

(ii) The farm operator or another producer on the farm prevents the county ASC committee from obtaining information necessary to determine the correct acreage of tobacco on the farm;

(iii) The farm operator fails in accordance with part 718 of this chapter to provide a certification of acreage planted to tobacco, or

(iv) The farm operator or another producer on the farm has not agreed to make contributions to the No Net Cost Fund or pay assessments to the No Net Cost Account, as applicable, in accordance with part 1464 of this title.

(4) *Converted penalty rate.* Except as provided in paragraph (f)(3) of this section, a converted penalty rate shall be entered on each MQ-77 issued to identify tobacco produced on a farm from which there is excess tobacco available for marketing and the percentage of excess is less than 100 percent. For the purpose of determining the penalty due on each marketing by a producer of tobacco subject to penalty, the converted rate of penalty per pound shall be determined by multiplying the applicable rate of penalty for the current crop by the percent excess determined according to this paragraph. For a farm without carryover tobacco from a prior year, the percent excess shall be determined by dividing the excess acreage of tobacco by the harvested acreage of tobacco for the farm. For a farm having carryover tobacco from a prior year, the percent excess shall be determined as follows:

(i) Determine the number of "carryover" acres by dividing the number of pounds of carryover tobacco from the prior year by the normal yield for the farm for that year. Reduce such "carryover" acres by the amount determined by subtracting the harvested acreage from the allotment in the current year. If the "carryover" acres are entirely offset by the underharvested acreage, the percent excess will be zero and a MQ-76 may be issued if the farm otherwise is eligible for price support and the remainder of this paragraph (f)(4) of this section are inapplicable.

(ii) Determine the number of "within quota carryover acres" by multiplying the "carryover acres" by the "percent within quota" (i.e., 100 percent minus the percent excess) for the year in which the carryover tobacco was produced.

(iii) Determine the "total acres" of tobacco by adding the "carryover acres" and the acreage of tobacco harvested in the current year.

(iv) Determine the "excess acres" by subtracting from the "total acres" the sum of the current year's allotment and the "within quota carryover acres."

(v) Determine the percent excess by dividing the "excess acres" by the "total acres."

(5) Except as provided in paragraphs (f) (3) and (4) of this section, a zero penalty rate shall be entered on any MQ-77 issued in accordance with this section.

(g) *Other marketing card data.* Other data specified in instructions issued by the Deputy Administrator shall be entered on the marketing card.

§ 723.306 Claim stamping and replacing marketing cards.

(a) *Claim stamping.* If a person is indebted to the United States and such indebtedness has been recorded on the county debt record, any marketing card issued for the farm on which the person has a producer interest shall bear the notation "U.S. Claim" followed by the amount of the indebtedness. The name of the debtor-producer, if different from the farm operator, shall be recorded directly under the claim notation. The notation "TMQ" indicating tobacco marketing quota as the type of indebtedness shall constitute notice to any buyer that until the amount of penalty is paid, the United States has a lien with respect to any crop of tobacco in which the debtor-producer has an interest. A claim notation other than "TMQ" shall constitute notice to any buyer that subject to prior liens, the net proceeds from any tobacco pledged as collateral for a price support loan shall be paid to the "Agricultural Stabilization and Conservation Service, USDA" to the extent of the indebtedness shown. The acceptance and use of a marketing card bearing a notation and information concerning an indebtedness to the United States shall not constitute a waiver by the debtor-producer of any right to contest the validity of such indebtedness by appropriate appeal. As claim collections are made, the amount of the claim shown on the card shall be revised to show the claim balance. If requested by the producer, the county ASCS executive director who issued the marketing card shall issue a claim-free marketing card when the claim has been paid.

(b) *Replacing, exchanging, or issuing additional marketing cards.* Subject to the approval of the county ASCS executive director, two or more marketing cards may be issued for any

farm. Upon the return to the county ASCS office of a marketing card which had been used in its entirety and before the marketing of tobacco from the farm has been completed, a new marketing card bearing the same name, information, and identification as the used card shall be issued for the farm. A new marketing card shall be issued to replace a card which has been determined by the county ASCS executive director who issued the card to have been lost, destroyed, or stolen.

§ 723.307 Invalid cards.

(a) *Reasons for being invalid.* A marketing card shall be invalid if:

- (1) If it is not issued or delivered in the manner prescribed;
- (2) An entry is omitted or is incorrect;
- (3) It is lost, destroyed, stolen, or becomes illegible; or
- (4) Any erasure or alteration has been made and not properly initialed by the county ASCS executive director.

(b) *Validating invalid cards.* If any entry is not made on a marketing card as required, either through omission or incorrect entry, and the proper entry is made and initialed by the county ASCS executive director who issued the card, or by a marketing recorder, then such card shall become valid.

(c) *Returning invalid cards.* In the event any marketing card becomes invalid (other than by loss, destruction or theft, or by omission, alteration, or incorrect entry, which has not been corrected by the county ASCS executive director who issued the card, or by a marketing recorder), the farm operator, or the person in possession of the card, shall return it to the county ASCS office at which it was issued.

§ 723.308 Rate of penalty.

The rate of penalty for a marketing year shall be equal to seventy-five (75) percent of the average market price for the kind of tobacco for the immediately preceding marketing year as determined by the U.S. Department of Agriculture. The rate of penalty will be determined and announced annually for each marketing year in a notice published in the Federal Register.

§ 723.309 Persons to pay penalty.

The persons to pay the penalty due on any marketing of tobacco subject to penalty shall be determined as follows:

(a) *Auction sale.* The penalty due on marketings by a producer or dealer through an auction sale shall be paid by the warehouse operator who may deduct an amount equivalent to the penalty from the price paid to the producer or dealer.

(b) *Nonauction sale.* The penalty due on tobacco acquired directly from a producer or dealer, other than at an auction sale, shall be paid by the person acquiring the tobacco who may deduct an amount equivalent to the penalty from the price paid to the producer or dealer in the case of a sale.

(c) *Marketing outside the United States.* The penalty due on marketings by a producer or dealer directly to any person outside the United States shall be paid by the producer or dealer making the sale.

§ 723.310 Date penalty is due.

(a) *Payment of penalty.* Penalties shall become due at the time the tobacco is marketed, except that in the case of false identification or failure to account for disposition, the penalty shall be due on the date of such false identification or failure to account for disposition. The penalty shall be paid by remitting the amount due to the State ASCS office not later than the end of the calendar week in which the tobacco becomes subject to penalty. A draft, money order, or check drawn payable to the Agricultural Stabilization and Conservation Service may be used to pay any penalty, but any such draft or check shall be received subject to payment at par.

(b) *Auction sale net proceeds.* If the penalty due on any auction sale of tobacco by a producer is in excess of the net proceeds of such sale (gross amount for all lots included in the sale less usual warehouse charges), the amount of the net proceeds accompanied by a copy of the tobacco sale bill covering such sale may be remitted as the full penalty due. Usual warehouse charges shall not include the following:

- (1) Advances to producers.
- (2) Charges for hauling, or
- (3) Any other charges not usually incurred by producers in marketing tobacco through a warehouse.

(c) *Nonauction sales.* Nonauction sales of excess tobacco shall be subject to the full rate of penalty and shall be paid in full even though the penalty may exceed the proceeds for the sale of tobacco.

§ 723.311 Lien for penalty.

(a) *Lien on tobacco.* Until the amount of any penalty which is imposed in accordance with the provisions of section 314 of the Act (7 U.S.C. 1314) is paid, a lien shall exist in favor of the United States for the amount of the penalty on:

- (1) The tobacco with respect to which such penalty is incurred; and
- (2) Any other tobacco subject to marketing quotas in which the person

liable for payment of the penalty has an interest and which is marketed in the same or a subsequent marketing year.

(b) *Lien precedence.* The lien on any other tobacco attaches at the time the debt is entered on a debt record in:

(1) *Indebted producers.* The county ASCS office for the county in which a subsequent crop of tobacco is grown.

(2) *Indebted warehouse operator.* The State ASCS office for the State in which the warehouse is located.

(3) *Indebted dealer.* The State ASCS office for the State to which the dealer is required to file reports.

(c) *Availability of list of marketing quota penalty debts.* Each county and State ASCS office shall maintain a list of tobacco marketing penalty debts which have been entered on the debt record for the respective office. The list shall be available for examination upon written request by any interested person.

§ 723.312 Request for refund of penalty.

Any person who paid any penalty may request the return of the amount of any such payment which is in excess of the amount required to be paid. Such request shall be filed on Form MQ-85, Farm Record and Account, with the county ASCS office within 2 years after the payment of the penalty. Approval of return shall be by the county ASC committee, subject to the approval of the State ASCS executive director.

§ 723.313 Identification of marketings.

(a) *Burley or flue-cured tobacco.* With respect to:

(1) *Identification of producer marketings.* Each auction and nonauction marketing of burley or flue-cured tobacco shall be identified by a valid marketing card, Form MQ-76, issued for the farm. The reverse side of the marketing card shall show in pounds:

- (i) 103 percent of quota,
- (ii) Balance of 103 percent of quota after each sale, and
- (iii) Date of each sale.

(2) *Cross-references of tobacco sale bill number to prior sale bill.* Each warehouse operator, for each lot of tobacco weighed in on the warehouse floor for sale the same day, shall cross-reference the tobacco sale bill to each prior tobacco sale bill for tobacco identified by the same marketing card. To accomplish the cross-reference, each other tobacco sale bill number shall be entered by the warehouse operator in the "Remarks" space on the tobacco sale bill, on all copies, at the time such tobacco is weighed at the warehouse.

(3) *Recording producer sale.* Each producer sale at auction shall be

recorded on Form MQ-72-1, Report of Tobacco Auction Sale, and each producer sale at nonauction shall be recorded on a Form MQ-72-2, Report of Tobacco Nonauction Purchase. For producer sales at nonauction, the dealer purchaser shall execute Form MQ-72-2 and shall enter the data on MQ-76. For producer sales at auction, Form 72-1 and Form MQ-76 shall be executed only by the ASCS marketing recorder.

(4) *Identification of dealer marketings of resale tobacco.* Each auction and nonauction marketing of resale tobacco in the current year, such tobacco shall be identified by a dealer identification card, Form MQ-79-2, issued to the dealer for use in the current marketing year.

(b) *Dark air-cured, fire-cured, or Virginia sun-cured tobacco:* With respect to dark air-cured, fire-cured, or Virginia sun-cured tobacco:

(1) *Identification of producer marketings.* Each marketing of such kind of tobacco from a farm shall be identified by a valid marketing card issued for the farm for the respective kind of a tobacco, either an MQ-76 or MQ-77 (including sale memo). With respect to each nonauction sale from:

(i) A within quota farm a check mark shall be entered on the inside of MQ-76, and

(ii) An excess farm for which an MQ-77 is issued, an executed bill of nonauction sale shall be prepared, and such bill of nonauction sale shall be delivered to a marketing recorder or other person who is authorized to issue sale memos.

(2) *Suspended sale and sales without marketing cards.* Any suspended sale, which is not identified by an MQ-76 or MQ-77 (including a sale memo) on or before the last warehouse sale day of the marketing season, or within 4 weeks after the date of marketing, whichever comes first, shall be identified by MQ-82, Sale Without Marketing Card, as a marketing of excess tobacco. Form MQ-82 shall be executed only by a marketing recorder or other representative of the State ASCS executive director.

(3) *Other persons authorized to execute MQ-76 or MQ-77 (including sale memo).*

(i) A warehouse operator who has been authorized during the current marketing year on MQ-78, Tobacco Warehouse Organization, may record a sale on MQ-76 (or MQ-77, including the issuance of a sale memo) to identify a sale for a farm if a marketing recorder is not available at the warehouse when the marketing card is presented.

(ii) Any warehouse operator, or dealer, who engages in the business of acquiring scrap tobacco from farmers,

and who has been authorized on MQ-78, may for each purchase of scrap tobacco execute an MQ-76, or MQ-77 (including a sale memo if the bill of nonauction sale has been executed).

(4) *Verification of sales processed during the absence of marketing recorder.* Any person authorized on MQ-78 to act as a marketing recorder shall promptly present to a marketing recorder for verification each warehouse bill (floor sheet) processed and identified by an MQ-76 or MQ-77 (including any sale memos) executed in the absence of a marketing recorder.

(5) *Withdrawal of approval to act as marketing recorder.* The authorization on MQ-78 for persons may be withdrawn by the State ASCS executive director if such action is determined to be necessary to properly enforce the regulations in this part.

(c) *Separate display on auction warehouse floor.* Any warehouse operator upon whose floor more than one kind of tobacco is offered for sale at public auction shall for each respective kind of tobacco:

(1) Display it in separate areas on the auction warehouse floor.

(2) Use a lot ticket that is distinguishably different from the lot ticket used to identify any other kind of tobacco.

(3) Identify each lot by a lot ticket clearly showing the kind of tobacco. However, if where the tobacco is represented to be a nonquota kind the lot ticket shall have imprinted thereon the type designation for the kind of quota tobacco normally marketed in the area.

(4) Make and keep records that will ensure a separate accounting and reporting of each of such kinds of tobacco (quota and nonquota) sold at auction over the warehouse floor.

(d) *Identification of returned first sale (producer) tobacco.* When resold at auction, tobacco which has been previously sold and returned to the warehouse by the buyer is resale tobacco. When such tobacco is resold by the warehouse operator, it shall be identified as leaf account resale tobacco.

(e) *Verification of penalties by warehouse operators or dealers.* Each sale of tobacco by a producer which is subject to penalty and which has been recorded by a marketing recorder shall be verified by a warehouse operator or dealer to determine whether the amount of penalty shown to be due has been correctly computed. Such warehouse operator shall not be relieved of any liability for the amount of penalty due because of any error which may occur in

computing the penalty and recording the sale.

(f) *Check register.* The serial number of the tobacco sale bill(s) shall be recorded by the warehouse operator on the check register or check stub for the check written covering the auction sale of tobacco by a producer.

(g) *Marketing card and sale memo for cigar tobacco.* With respect to cigar tobacco:

(1) If a sale of producer's cigar tobacco to a buyer is not identified with a marketing card (MQ-76 or MQ-77) issued for the farm, including a sale memo from MQ-77, by the end of the sale day and recorded and reported on MQ-79 (CF&B), Buyers Record, by the tenth day of the calendar month next following the month during which the sale occurred, the marketing shall be identified on MQ-79 (CF&B) as a marketing of excess tobacco and reported not later than the tenth day of the calendar month next following the month during which the sale date occurred, the marketing shall be identified on MQ-79 (CF&B) as a marketing of excess tobacco, and reported not later than the tenth day of the calendar month next following the month during which the sale day occurred.

(2) *Verification of penalty by buyer.* Each excess sale memo issued by a buyer shall be verified by the buyer to determine whether the amount of penalty shown to be due has been correctly computed and such buyer shall not be relieved of any liability with respect to the amount of penalty due because of any error which may occur in issuing the sale memo.

Subpart D—Recordkeeping, reporting requirements, marketing penalties, and other penalties

§ 723.401 Registration of burley or flue-cured warehouse operators or dealers.

(a) *Warehouse registration.* For burley and flue-cured tobacco, any warehouse operator dealing in either flue-cured or burley tobacco shall be registered with the U.S. Department of Agriculture. Such registration will be handled by the North Carolina State ASCS Office, Raleigh, North Carolina.

(b) *Dealer registration.* Except for dealers who are exempt from the requirements for maintaining regular records and reports on the Form MQ-79 as provided in § 723.405 of this part, each person who expects to deal in burley and flue-cured tobacco during a marketing year shall annually register with the U.S. Department of Agriculture for the respective marketing year beginning with the 1989-1990 marketing

year. Such registration shall be handled by the North Carolina State ASCS Office, Raleigh, N.C. Registration may be accomplished by such person filing a MQ-79-2-A, after March 1 of the calendar year in which the marketing year begins, at the local county ASCS office where the applicant resides or where the applicant's principal business is located. The applicant shall provide the names of other individuals who will be authorized to use the assigned dealer registration number to transact business on behalf of the applicant. Only one dealer registration number will be issued to each dealer entity. Persons maintaining the same residence shall be considered one entity, unless such persons can substantiate to the satisfaction of the State ASC committee for the State in which the application is made, that such persons operate their tobacco business entirely as separate entities.

(1) *Issuance of dealer cards.* After approval by the North Carolina State ASCS Office, each dealer will be assigned a four-digit identification number and issued a dealer identification card (Form MQ-79-2).

(2) *TMQ lien notation.* If a claim has been established against a dealer as a result of a tobacco marketing quota penalty such dealer, upon notification by the applicable State ASCS office, shall return the dealer identification card to the State ASCS office within 15 days of notification. Upon timely return of the dealer identification card the claim shall be annotated on the card and promptly returned to the dealer.

§ 723.402 Warehouse authorized to retain producer marketing cards between sales.

(a) *General.* Notwithstanding any other provisions of this part, to facilitate the scheduling of farmer's tobacco to the warehouse, marketing cards with the permission of the producer may be retained at the warehouse between sales even though no producer on the farm for which the card is issued has tobacco on the floor for sale or to be settled for, as provided in this section.

(b) *Warehouse eligible to retain producers marketing cards between sales.* A warehouse shall be eligible to retain producer marketing cards between sales if the operator thereof shall:

(1) Execute and file on a form approved by ASCS a written request with the State ASC committee (or county ASC committee if designated by the State ASC committee).

(2) Agree to be responsible to ASCS for an amount of money equal to the amount that may be assessed against any producer as marketing quota

penalties, if the marketing that is the basis of assessment of penalty occurred while the warehouse was authorized to have custody of the marketing card, for:

(i) Burley or flue-cured tobacco for any overmarketing resulting from errors made at the warehouse in entering "balance after sale" pounds on the producer's marketing card or failure to deduct pounds sold on producer's marketing card.

(ii) Tobacco falsely identified for marketing by use of the producer's marketing card.

(iii) Producer's failure to account for any tobacco marketed by use of the producer's marketing card.

(iv) Any burley or flue-cured tobacco marketed at the warehouse in excess of 103 percent of quota as shown on the producer's marketing card.

(3) Agree to maintain an accurate and up-to-date journal containing a listing of all producer marketing cards retained by the warehouse to facilitate the scheduling of farmer's tobacco. The journal shall show for each card retained the:

- (i) Name of the operator;
- (ii) Serial number of farm;
- (iii) Marketing card number, if applicable;
- (iv) Date marketing card obtained from producer; and
- (v) Date marketing card returned to producer.

Such journals shall be maintained for the length of time and under the conditions required for other warehouse records.

(4) Agree to return the marketing card to the producer at any time the producer may so request, or in the absence of a request, return it to the producer within 7 days after the close of the warehouse for the season.

(5) Agree that this authorization may be terminated by ASCS for failure to comply with provisions of this agreement.

(c) *Penalties considered to be the responsibility of warehouse operators.* Notwithstanding any other provision of this part, a warehouse operator who executes and files a written request with the State ASC committee (or county ASC committee if designated by the State ASC committee) for authorization to retain producer's marketing cards at the warehouse, with grower permission, shall be responsible to ASCS for an amount of money equal to the amount that may be assessed against the producer as marketing quota penalties if the marketing that is the basis of such assessment occurred while the warehouse was authorized to have custody of the marketing card, for:

(1) Any burley or flue-cured tobacco overmarketings resulting from errors made at the warehouse in entering "balance after sale" pounds on the burley or flue-cured producer's marketing card or failure to deduct pounds sold on the producer's marketing card. However, the warehouse operator shall not be responsible for any penalty under this subparagraph, if such penalty would not have been assessed against the producer in accordance with § 723.409(e) of this part.

(2) Tobacco falsely identified for marketing by use of the producer's marketing card.

(3) Producer's failure to account for any tobacco marketed by use of such producer's marketing card.

(4) With respect to burley or flue-cured producers, tobacco marketed at the warehouse in excess of 103 percent of quota as shown on the producer's marketing card.

§ 723.403 Auction Warehouse operators' records and reports.

(a) *Report on Form MQ-78, Tobacco Warehouse organization.* Each warehouse operator shall annually, prior to opening of auction markets, furnish ASCS an executed Form MQ-78 showing:

- (1) Form of business organization.
- (2) Names and addresses of warehouse officials and bookkeeper.
- (3) Names and addresses of other warehouses in which the officials and bookkeepers have a financial interest.
- (4) Names and address of custodian of warehouse records, including their location.

(b) *Separate records and reports.* Each auction warehouse operator shall keep the records and make the reports separately for each quota or nonquota kind of tobacco as provided in this section.

(c) *Record of marketing.* Each warehouse operator shall:

(1) *Auction or nonauction sale.* Keep such records as will enable the warehouse operator to furnish the following information to State ASCS office with respect to each sale of tobacco made at such person's warehouse:

- (i) The name of the operator of the farm on which the tobacco was produced and the name of the producer, in the case of a sale by a producer.
- (ii) The name of the seller in the case of a resale.
- (iii) Date of sale.
- (iv) Number of pounds sold.
- (v) Amount of any penalty and the amount of any deduction for such penalty from the price paid the producer.

(vi) With respect to each individual lot of tobacco constituting an auction sale, the:

- (A) Name of purchaser.
- (B) Number of pounds sold.
- (C) Gross sale price.

(2) *Separate account records.*

Maintain records of all purchases and resales of tobacco by the warehouse operator to show a separate account for:

(i) Nonauction purchases by or on behalf of the warehouse operator of farmer owned tobacco.

(ii) Purchases and resales of:

- (A) Leaf account tobacco.
- (B) Floor sweeping tobacco.

(d) *Tobacco sale bill for burley and flue-cured tobacco.* (1) Each burley or flue-cured tobacco warehouse operator shall use tobacco sales bills furnished at the warehouse operator's expense showing, as a minimum, the following information:

- (i) Tobacco sale bill number;
- (ii) For flue-cured tobacco only, registration number assigned the warehouse by the Department;
- (iii) Name and address of warehouse where sale is held;
- (iv) For flue-cured tobacco only, the identification of other producers having an interest in the tobacco;
- (v) Date of sale;
- (vi) Number of pounds in each lot;
- (vii) Name and address of seller; and
- (A) Farm number (including State and county codes) for producer tobacco, and
- (B) Dealer registration number for resale tobacco;

(viii) Identification number, if available, for each lot of tobacco to be offered for sale;

(ix) Poundage balance before sale for producer tobacco based on 103 percent of farm quota;

(x) Name or symbol of purchaser of each lot which is sold;

(xi) Gross number of pounds sold;

(xii) Sales price for each lot and gross sale price for all lots sold;

(xiii) Nonauction purchases by the warehouse holding the sale;

(xiv) Tobacco grade for tobacco consigned to price support;

(xv) The buyer's grade symbol for tobacco bought by private buyers.

(xvi) The letters "N/A" in the buyer and grade space for nonauction purchases by the warehouse.

(xvii) Marketing quota penalty collected; and

(xviii) Amount withheld from sale to cover claims due the United States.

(2) At the end of each sale day, the tobacco sale bills shall be sorted and filed in numerical order by sale dates, and lot tickets shall be filed in an orderly manner by sale dates or by numerical order.

(e) *Identification of tobacco for marketing—(1) Marketing card.* Each marketing of tobacco from a farm in any State for which a farm marketing quota has been established for any kind of tobacco shall be identified by a marketing card issued for the farm on which such tobacco was produced (unless prior to the marketing of such tobacco an AMS inspection certificate is obtained showing that the tobacco offered for sale is a kind of tobacco not subject to marketing quotas).

(2) *Recording farm identification.* For burley or flue-cured tobacco, at the time the tobacco is weighed in, the warehouse operator shall record on the tobacco sale bill, the State and county codes and the farm serial number from the marketing card issued for the farm from which the tobacco is to be marketed.

(3) *Return of marketing card.* For tobacco that is to be sold at auction, the warehouse operator shall retain the marketing card until the producer has been paid for the sale of the tobacco or the tobacco is removed from the warehouse by the producer at which time the marketing card shall be returned to the producer. In any case where a producer's marketing card is found in the possession of a warehouse operator, and no producer on the farm for which the card is issued has tobacco on the floor for sale, or tobacco for which settlement is not yet completed, such card will be picked up by an ASCS representative for return to the producer. The warehouse operator shall be responsible for the safekeeping and proper use of the marketing card during such person's retention of the marketing card.

(4) *No price support.* For burley or flue-cured tobacco, if tobacco is to be marketed at auction from a farm for which a marketing card is issued bearing the notation "No Price Support", the warehouse operator shall enter the same notation on the tobacco sale bill at the time the tobacco is weighed in for sale. The warehouse operator shall prepare a separate tobacco sale bill to cover any tobacco which represents more than 103 percent of the effective farm marketing quota and the notation "No Price Support" shall be shown on such tobacco sale bill. The sale of such tobacco shall be considered a separate sale.

(5) *Nonauction purchase.* The warehouse operator shall enter the letters "NA" on each line of a tobacco sale bill on which there is recorded tobacco purchased by or for the warehouse at nonauction sale and shall record on all such tobacco sale bills:

(i) For burley or flue-cured tobacco, the farm serial number from the marketing card that is used to identify the tobacco at the time of the nonauction purchase.

(ii) For tobacco other than burley or flue-cured, the serial number of the marketing card that is used to identify the tobacco at the time of the nonauction purchase.

(6) *Copy of sale bill.* The warehouse operator shall furnish to the producer a copy of the tobacco sale bill bearing the letters "NA" for any lot of such tobacco purchased by the warehouse operator.

(7) *Basket ticket.* At the time tobacco is weighed for marketing, the warehouse operator shall record the weight of the lot of tobacco on the tobacco sale bill and on the lot ticket. The sale bill number on which the lot of tobacco is recorded shall be recorded on the lot ticket. If the marketing card which is presented to identify the tobacco at weigh-in bears the notation "No Price Support," the same notation shall be entered by the warehouse operator on the lot ticket for each lot of tobacco which is identified with the same marketing card.

(8) *Recording serial number of marketing card.* For tobacco other than burley or flue-cured, before the tobacco is offered for sale, the warehouse operator shall record, on the sale bill, the serial number of the Form MQ-76 or MQ-77 issued for the farm from which the tobacco is to be marketed at auction.

(9) *Recording sale bill number.* For tobacco other than burley or flue-cured, the serial number of the sale bill shall be recorded:

(i) By the warehouse operator on the check register or check stub from the check written to cover an auction sale of tobacco by a producer.

(ii) On the inside of the marketing card by the marketing recorder or warehouse operator for each sale of tobacco by a producer.

(10) *Burley or flue-cured marketings.* A marketing card used to cover a sale of burley or flue-cured tobacco shall show on the reverse side the poundage balance of the "103 percent of quota."

(i) *Auction sale.* At the time of weigh-in the tobacco sale bill shall show the poundage balance of 103 percent of the farm's quota. The tobacco sale bill shall show the pounds on which penalty is due, and the amount of penalty.

(ii) *Nonauction sale to a warehouse operator at the warehouse.* If the tobacco sale bill includes both an auction sale and a nonauction sale such combined pounds shall be used to compute and reflect the balance of the "103 percent of quota." The tobacco sale bill shall show the pounds on which

penalty is due and the amount of the penalty.

(iii) *Nonauction country purchase by a warehouse operator.* The warehouse operator shall deduct, from the balance of the "103 percent of quota" entry on the marketing card, the pounds of tobacco purchased as a nonauction country purchase. In addition, each warehouse operator shall record on Form MQ-79 and on Form MQ-72-2, Report of Tobacco Nonauction Purchase, each nonauction country purchase of tobacco made by such warehouse operator. The data to be reported on Form MQ-72-2 is set forth in § 723.404 of this part.

(11) *Sale memo and bill of nonauction sales.* For tobacco other than burley or flue-cured, a record of sales on Forms MQ-76, MQ-77, or MQ-82, Sale Without Marketing Card (including sale memo from MQ-77 or MQ-82), shall be obtained by a warehouse operator to cover each marketing of tobacco from a farm through a warehouse and each nonauction sale of tobacco purchased by or for the warehouse operator including scrap tobacco obtained as result of providing curing space or stripping space for farmers. Each MQ-76 and MQ-77 (including sale memo) shall be executed as follows:

(i) *Auction sale.* An auction sale identified by MQ-76 shall show in the spaces provided therefor, the sale bill number, check-mark to show the sale was by auction, a check-mark to show nonauction for purchases identified "NA" on the sale bill, pounds sold, name and address of warehouse, and date of sale. In addition, each sale memo issued from MQ-77 to cover an auction sale shall show on the first page thereof in all of the spaces provided therefor, the warehouse bill number, pounds sold, amount of penalty due, name and address of warehouse, and date of sale.

(ii) *Nonauction sale to a warehouse operator who does not prepare a sale bill.* An MQ-76 used to cover a nonauction sale of tobacco to a warehouse operator who does not prepare a sale bill to cover the sale shall show, a check-mark to indicate sale was by nonauction, pounds sold, name and address of the warehouse, and date of sale. When an MQ-77 is used under this paragraph, a sale memo shall be executed, including the signature of the producer on the reverse side.

(iii) *Nonauction sale to a warehouse operator who prepares a sale bill.* When a warehouse operator purchases:

(A) All the delivery of a producer's tobacco at a nonauction sale and prepares a sale bill to cover the purchase, on MQ-76 there shall be shown the bill number, check-mark to

show nonauction purchases, pounds sold, name and address of warehouse, and date of sale. When an MQ-77 is used a sale memo shall be executed, including the signature of the producer on the reverse side.

(B) Part of a delivery of a producer's tobacco as a nonauction purchase and the remainder of the tobacco is sold at auction, if such tobacco is identified by an MQ-76 the Record of Sales shall be completed to show the name and address of the warehouse, the date of sale, the sale bill number, check-mark under both auction and nonauction, and, under "Lbs. Sold," the total number of pounds covered by the entire delivery. If the sale is identified by an MQ-77, the sale memo (front) shall be completed to show the sale bill number, the total number of pounds covered by the entire delivery under "Lbs. Sold," the amount of penalty due, name and address of the warehouse, and the date of sale. In addition the reverse side of the sale memo shall show the number of pounds sold at nonauction.

(f) *Nonquota tobacco or quota tobacco of a different kind.* If tobacco is presented for sale that is represented to be nonquota tobacco or should there be a question as to what kind of quota tobacco is being offered for sale, an inspection shall be obtained from the Agricultural Marketing Service of this Department (AMS) after the tobacco is weighed and in line for sale. The lot ticket for the tobacco shall be cross-referenced to the sale bill by sale bill number and date. The sale bill shall show the producer's name and address and the State and county code and farm number of the farm on which the tobacco was produced. If an AMS inspection shows that a lot of tobacco is of a different kind than that identified by the lot ticket, such tobacco shall be deleted from the original sale bill and a revised sale bill prepared. Copies of the lot ticket and sale bill shall be furnished to the State ASCS office at the end of the sale day.

(g) *Labeling tobacco sale bill for resale tobacco.* In the case of resales, each sale bill shall show "resale" and:

(1) For dealers, the name of the dealer making each resale; and

(2) For the warehouse, the name of the warehouse and either "floor sweepings" or "leaf account" tobacco.

(h) *Suspended sale record.* (1) Any tobacco sale bill covering sale of tobacco for which a valid marketing card or dealer identification card was not presented at the end of the sale day shall be given to a marketing recorder who shall stamp such bills, "Suspended", and shall handle

according to instructions provided by the Deputy Administrator.

(2) When cleared, such suspended sale shall show "suspended-cleared" and date cleared. If a suspended sale is not cleared from suspension by the last auction sale day for the warehouse for the season, (or for burley tobacco only, within 7 days of the sale if such date is earlier) it shall be considered a sale of excess tobacco and penalty at the full rate shall be remitted by the warehouse operator.

(i) *Payee to be shown on auction warehouse check.* Any auction warehouse which issues a check to cover the auction or nonauction sale of tobacco shall issue such check only in the name of the payee. A warehouse check shall not be issued in the name of the seller and bearer, for example "John Doe or Bearer."

(j) *Warehouse entries on other dealer's reports.* Each warehouse operator shall record, or have the dealer record, on a Form MQ-79 the total purchases and resales made by each such dealer or other warehouse operator during each sale day at the warehouse. Warehouse operators shall sign the Form MQ-79 on the same line as the transaction is recorded when a dealer resells tobacco at the warehouse. If any tobacco resold by the dealer and carried over by the dealer from a crop produced prior to the current crop, an entry shall be made on the MQ-79 to clearly show such fact.

(k) *Warehouse data for burley or flue-cured tobacco.* (1) Each operator of a burley or flue-cured tobacco auction warehouse shall prepare at the end of each sale day a report on MQ-80, Daily Warehouse Sales Summary, showing for each sale day:

(i) For each manufacturer, buyer, order buyer, and any tobacco cooperative, pounds of tobacco purchased at auction, (consigned in the case of tobacco cooperatives).

(ii) The sum of the items for paragraph (k)(1)(i) of this section.

(iii) Resales at auction for each person listed under paragraph (k)(1)(i) of this section.

(iv) For each dealer subject to reporting purchases and resales on MQ-79, as originally billed, the total pounds of tobacco purchased at auction, and resales at auction.

(v) The total pounds purchased at auction at the warehouse for the leaf account.

(vi) The total pounds purchased at nonauction at the warehouse for the leaf account.

(vii) The sum of the total pounds for paragraphs (k)(v) and (vi) of this section.

(viii) The total leaf account resales.

(ix) The total floor sweeping resales.

(x) The sum of the total purchases for paragraphs (k)(1)(ii), (iv), and (vii) of this section.

(xi) The sum of the total resales for paragraphs (k)(1)(ii), (iv), (viii) and (ix) of this section.

(xii) The totals of the purchases column on the Form MQ-79 representing the nonauction purchases for the warehouse leaf account.

(xiii) The totals of the resales column on Form MQ-79 representing the nonauction resales (including floor sweepings nonauction sales) by the warehouse.

(xiv) For each warehouse sale of excess tobacco from a farm, the applicable farm number with daily remittance of the penalty due to accompany Form MQ-72-1.

(xv) For each dealer, at the time of settlement having excess resale tobacco, the applicable dealer identification number with daily remittance of the penalty due.

(2) As to the information required to be entered on MQ-80, Daily Warehouse Sales Summary, by the marketing recorder, the warehouse operator shall keep and make available such records as will enable the marketing recorder to enter thereon:

(i) The total number of Forms MQ-72-1 for the sale day and the sum of pounds sold, and

(ii) The total number of suspended sale bills and the sum of such pounds sold.

(3) At the end of the season, each warehouse operator shall:

(i) Report on the final MQ-80 for the season the quantity of leaf account tobacco and floor sweepings, if any, on hand and its location,

(ii) Permit its inspection by a representative of ASCS, and

(iii) Provide for the weighing of such tobacco, to be witnessed by an ASCS representative, and furnish to such representative a certification as to the actual weight of such tobacco. After the weight of such tobacco has been obtained, it shall be considered as the official weight for comparing purchases and resales for the purpose of determining the amount of penalty, if penalty is due.

(4) The warehouse operator shall furnish to the marketing recorder a copy of each executed MQ-80.

(5) Before the next marketing season begins, carryover tobacco reported by the warehouse operator as provided in paragraph (k)(3) of this section shall be reinspected by a representative of ASCS.

(i) If the reinspection indicates an amount of carryover tobacco different

from that amount determined by the initial inspection, the warehouse operator shall:

(A) Provide for the weighing of such tobacco which shall be witnessed by a representative of ASCS.

(B) Furnish to such representative at the time of weighing a certification as to the actual weight of the tobacco.

(ii) If the ASCS representative determines that the weight of the tobacco is different, by reweighing, than the amount reported on the initial certification, the initial weight, together with the reweighed quantity after taking into consideration any purchases and resales that occurred subsequent to the initial certification as provided in paragraph (k)(3) of this section, shall be used for the purpose of determining the amount of penalty, if penalty is due.

(iii) The reweighed quantity shall be the official pounds to be credited to the account as carryover tobacco.

(l) *Warehouse data for tobacco other than burley or flue-cured.* (1) Each operator of a tobacco auction warehouse, other than the operator of a burley or flue-cured auction warehouse, shall prepare and promptly forward at the end of each sale day to the State ASCS office a report on MQ-80, Daily Auction Warehouse Report, showing for each sale day, unless otherwise stated below:

(i) For each dealer or buyer as originally billed, the total pounds of tobacco purchased at auction and resales at auction on the warehouse floor.

(ii) For any association as originally billed, the total pounds and gross amount of loan tobacco acquired at auction, and resales at auction, if any, on the warehouse floor.

(iii) The total pounds of:

(A) Leaf account purchases at auction on the warehouse operator's own floor,

(B) Leaf account purchases at nonauction sale for which a floor sheet is prepared,

(C) All leaf account resales at auction on the warehouse operator's own floor, including resales of tobacco from the warehouse operator's buyers corrections account, and

(D) All resales at auction on the warehouse operator's own floor of floor sweepings which accumulated on the warehouse operator's own floor.

(iv) The respective sums of the purchases, including loan tobacco, and resales for paragraphs (l)(1)(i), (ii), and (iii) of this section.

(v) The computed total of first sales at auction on the warehouse floor.

(vi) The warehouse gross sale pounds for the day as billed to buyers.

(vii) The pounds on warehouse check register if shown thereon, and

(viii) The total pounds of the resales.

(ix) On the report for the last sale day for the season, the pounds of all tobacco on hand whether such tobacco represents leaf account tobacco or floor sweepings which accumulated on the warehouse operator's own floor.

(x) For each warehouse sale of excess tobacco from a farm, the applicable sale memo and numbers thereof with remittance of the penalty due as shown thereon.

(2) As to information required to be entered on MQ-80, Daily Auction Warehouse Report, by the marketing recorder, the warehouse operator shall keep and make available such records as will enable the marketing recorder to enter thereon:

(i) For each sale identified by an MQ-76, MQ-77 (including sale memo), or MQ-82, Sale Without Marketing Card, the pounds sold;

(ii) For each sale suspended, the warehouse bill(s) number and pounds sold;

(iii) For each sale cleared from suspension, the MQ-76 number or, for MQ-77 or MQ-82, the sale memo number and the date of clearance.

(3) When a producer rejects the sale of a lot of tobacco, and the tobacco has been billed out and the bills presented to the buyer, the warehouse operator shall not change the marketing card, or Form MQ-80 on which the sale was reported. If the warehouse operator gains possession of the tobacco and it is resold by such warehouse operator, it shall be identified as resale tobacco.

(4) In balancing first sales (represented by marketing recorder's total) with computed first sales (bill-out total minus resales as reported by the warehouse operator) the State ASCS executive director is authorized to approve reports with variance not to exceed one-half of 1 percent of such pounds.

(5) At the end of the season, each warehouse operator shall:

(i) Report on the final MQ-80 for the season the quantity of leaf account tobacco and floor sweepings, if any, on hand and its location,

(ii) Permit its inspection by a representative of ASCS, and

(iii) Provide for the weighing of such tobacco (to be witnessed by a representative of ASCS) and furnish to such representative a certification as to the actual weight of such tobacco. After the weight of such tobacco has been obtained, it shall be considered as the official weight for comparing purchases and resales for the purpose of determining the amount of penalty, if

penalty is due. Separate data shall be reported for floor sweeping tobacco.

(m) *Bill-out invoice.* For flue-cured tobacco when the tobacco has been sold at auction, the bill-out invoice to the buyer shall include the warehouse registration number (warehouse code), sale bill number, and line number on which the lot of tobacco was recorded on the sale bill.

(n) *Maintaining copies of bill-out invoices to purchaser or daily summary journal sheet to reflect daily transactions.* For each marketing year, the warehouse operator shall maintain copies of the bill-out invoice to the purchaser by grades showing the pounds purchased. In lieu of this requirement, the warehouse operator may prepare and maintain for each sale day on a current basis a daily summary journal sheet to reflect for each purchaser (including warehouse leaf account or other similar account) pounds and dollar amounts for:

(1) Tobacco originally billed to the purchaser.

(2) Mathematical billing errors and corrections (added and deducted) from purchaser's adjustment invoices.

(3) Short (deducted) and long (added) weights from purchaser's adjustment invoices.

(4) Short (deducted) and long (added) lots from purchaser's adjustment invoices.

(5) Net tobacco received and paid for by purchase.

(o) *Handling rejected (producer) sale after bill-out.* Where a producer rejects the sale of a lot of tobacco, and the tobacco has been billed-out and bills presented to the buyer, the warehouse operator shall not change the MQ-76 or MQ-80 on which the sale was reported. If the warehouse operator gains possession of the tobacco, and it is resold by such warehouse operator, it shall be identified as resale tobacco.

(p) *Report to county ASCS office of long weights and long lots.* Each warehouse operator shall report to the county ASCS office or marketing recorder long weights and long lots of producer tobacco (first sales) for which the farmer has been paid.

(q) *Record and report of warehouse operator's leaf account purchases and resales not on such warehouse operator's floor.*

(1) Each warehouse operator shall keep a record and make reports on MQ-79, Dealer's Report, showing:

(i) All nonauction purchases of tobacco, except nonauction purchases at such warehouse operator's warehouse which are reported on MQ-80.

(ii) All purchases and resales of tobacco at public auction through

warehouses other than such operator's own warehouse.

(iii) All nonauction resales of tobacco.

(2) Form MQ-79 shall be prepared and a copy, including copies of Form MQ-72-2 for all nonauction purchases of burley or flue-cured tobacco, forwarded to the State ASCS office not later than the end of the calendar week (at the end of each sale day during the auction season for such warehouse) in which such tobacco was purchased or resold.

(3) If tobacco is purchased prior to the opening of the local auction market, an MQ-79 shall be prepared and a copy, together with copies of MQ-72-2 for all nonauction purchases of burley or flue-cured tobacco, forwarded to the State ASCS office not later than the end of the calendar week which would include the first sale day of the local auction markets.

(4) A remittance for all penalties shown by the entries on Form MQ-79 and Form MQ-72-2 to be due shall be forwarded to the State ASCS office with the original copy of MQ-79.

(5) Resales of floor sweepings shall be reported separately from leaf account tobacco.

(r) *Buyers corrections account.* Each warehouse operator shall keep such records including negative adjustment invoices as will enable the warehouse operator to furnish a weekly report on Form MQ-71 to the State ASCS office showing the total pounds of the debits (for returned lots, short lots, and short weights of tobacco) and the credits (for long lots and long weights of tobacco) to the buyers corrections account. Where the warehouse operator returns to the seller tobacco debited to the buyers corrections account, the warehouse operator shall prepare an adjustment invoice to the seller. This invoice shall be the basis for a credit entry for the warehouse in the buyers corrections account and a corresponding purchase (debit entry) in the case of a dealer on such dealer's MQ-79, Dealer's Report. Any balancing figure reflected on the warehouse operator's summary of bill-outs shall not be included in the buyers corrections account.

(s) *Reporting of processed leaf account tobacco.* Any warehouse operator who delivers tobacco to a firm for the purpose of redrying, processing, or stemming of such tobacco shall, by the end of the week in which such tobacco was delivered, report to the State ASCS office on MQ-79, Dealer's Report:

(1) The date delivered;

(2) Name and address of the firm to which the tobacco was delivered, and

(3) The pounds of tobacco (green weight) delivered which shall be entered in the resales pounds column. Such tobacco shall be considered a resale on the date of delivery for the purpose of balancing the warehouse account and collection of penalties where penalties are due.

(t) *Report of farm scrap resulting from grading tobacco for farmers.* Any warehouse operator or any other person who grades tobacco for farmers shall maintain records which will enable such person to furnish the State ASCS office the name of the farm operator and the approximate amount of scrap tobacco obtained from the grading of tobacco from each farm.

(u) *Report of farm scrap resulting from furnishing stripping space for farmers.* Any warehouse operator or any other person who provides tobacco curing space or stripping space for farmers shall maintain records which will enable such person to furnish the State ASCS office the name of the farm operator and the approximate amount of scrap tobacco obtained from each farm resulting from providing such space.

(v) *Producer tobacco.* Producer tobacco (first sale) in possession of a warehouse operator, resulting from long weights and long lots, which has not previously been identified by a sale shall be recorded and reported in the same manner as a nonauction sale to a warehouse operator who does not prepare a warehouse bill (floor sheet) and shall be reported on MQ-79, Dealer's Record. Penalty shall be due on this tobacco at the full penalty rate for the respective kind of tobacco or, if the kind is not known, at the penalty rate for the kind of tobacco generally marketed through the warehouse.

§ 723.404 Dealer's records and reports, excluding cigar tobacco buyers.

(a) *General.* This section is applicable to all kinds of tobacco except cigar tobacco.

(1) Each dealer, except as provided in § 723.405 of this part shall keep by kinds of tobacco the records and make the reports separately for each kind (quota and nonquota) of tobacco as provided in this section. Adjustment invoices, including the adjustment invoices for any sale day for which there is no adjustment to be made, required to be furnished to an auction warehouse shall be identified by the warehouse identification number (if applicable) and the reporting dealer's identification number (if applicable) as well as the names of the warehouse and dealers involved in the transaction.

(2) Each dealer shall properly execute the "Receipt for Dealer's Record"

contained in MQ-79, which is issued to the dealer, and shall transmit such receipt to the applicable State ASCS office.

(b) *Record of marketings.* A dealer shall keep records which provide the following information for each lot of tobacco, including scrap tobacco, purchased or sold by the dealer:

(1) *Purchases.* (i) The name of:
(A) The warehouse through which the tobacco was purchased, if purchased at a warehouse auction; or
(B) The operator of the farm on which the tobacco was produced, if purchased from a producer as a nonauction purchase, and the name of the producer of the tobacco, if different from the operator; or

(C) The seller if purchased as a nonauction purchase from a warehouse operator or dealer.

(ii) The identification number of the warehouse, farm, or dealer, as applicable, at/from which the tobacco was purchased.

(iii) The address, the producer association number, if applicable, and percentage share of the proceeds of the farm operator and any other producer from whom tobacco was purchased as a nonauction purchase.

(iv) The date of purchase.
(v) The pounds of tobacco purchased.
(vi) The gross purchase price.
(vii) The amount of penalty.
(viii) The amount deducted for the "No Net Cost Tobacco Account."
(ix) The quantity of tobacco purchased from a prior crop and carried over for marketing in a subsequent crop year.

(2) *Sales.* (i) The name and identification number of the:

(A) Warehouse through which the tobacco was sold, if sold at a warehouse auction, or

(B) Buyer if the tobacco was sold at a nonauction sale.

(ii) The date of sale.
(iii) The pounds of tobacco sold.

(iv) The gross sale price.

(c) *Nonauction purchase.*

(1) Each purchase of tobacco from a producer from a quota producing area shall be identified by a marketing card, issued for the farm on which the tobacco was produced unless an AMS inspection is obtained prior to purchase which shows that tobacco being offered for sale is a kind not subject to marketing quotas.

(2) For burley and flue-cured tobacco:

(i) After each nonauction purchase, the dealer shall enter a declining balance of "103 percent of quota" on the reverse side of the marketing card. The declining balance shall be determined by reducing the previous "103 percent of

quota" entry on the marketing card by the number of pounds of tobacco purchased. The date the tobacco was purchased also shall be entered on the marketing card at the time each lot of tobacco is purchased.

(ii) After each nonauction purchase, the dealer shall prepare a form MQ-72-2 which shall set forth the following:

(A) The date of the purchase.
(B) The registration number of the dealer.

(C) The name and address of the person selling the tobacco.

(D) The identification number (farm number, warehouse code, or dealer number, as applicable) of the person selling the tobacco.

(E) The pounds of tobacco purchased.

(F) The amount of penalty collected.

(G) The method (estimating or weighing) of determining the pounds of tobacco marketed.

(H) The signature of the seller and the date signed.

(iii) The dealer shall make deductions for producer marketing assessments to the No Net Cost Tobacco Account as provided for in Part 1464 of this title. For nonauction purchases which are made by the dealer from producers, the dealer shall make a deduction in accordance with Part 1464 of this title from the price paid to the producer for the tobacco. However, a deduction shall not be made if the original "103 percent of quota" entry on the marketing card used to identify the tobacco was zero pounds. The amount of the deduction which is applicable to tobacco marketed during each marketing year will be that amount per pound which is approved and announced by the Secretary as the producer marketing assessments to the No Net Cost Tobacco Account for each such marketing year.

(3) For all other kinds of tobacco:

(i) When a Form MQ-77 Marketing Card is used to identify a nonauction sale, the producer's signature shall be obtained on the reverse side of a sale memo which is a part of the form MQ-77. A nonauction sale not identified by a marketing card shall be identified by a form MQ-82 executed by a marketing recorder or other representative of the State ASC committee. The dealer shall record each nonauction purchase of tobacco on form MQ-79, Dealer's Record.

(ii) The dealer shall make deductions for producer contributions to the No Net Cost Tobacco Account provided for in part 1464 of this title. For nonauction purchases which are made by the dealer from producers, the dealer shall make a deduction in accordance with part 1464 of this title from the price paid to the

producer for the tobacco. However, a deduction shall not be made if the marketing card used to identify a kind of tobacco shows a converted penalty rate of 100 percent. The amount of the deduction which is applicable to such kind of tobacco marketed during each marketing year will be that amount per pound which is approved and announced by the Secretary as the producer contribution to the No Net Cost Tobacco Account or Fund for each such marketing year.

(d) Record and report of purchases and resales. (1) For burley and flue-cured tobacco, each dealer shall keep a record and make reports on Form MQ-79 showing all purchases and resales, excluding tobacco not in the form normally marketed by producers. After each transaction is entered on the Form MQ-79, each dealer shall enter a balance to reflect the pounds of tobacco remaining that may be sold without causing prior resales to exceed prior purchases. Any tobacco sold in excess of such balance shall be considered excess tobacco and subject to a marketing quota penalty at the full penalty rate. The purchaser shall sign the Form MQ-79 on the same line as the transaction is recorded by the dealer who is offering such tobacco for resale. In the event of a purchase or resale of tobacco which is purchased by the dealer from a crop of tobacco produced prior to the current crop, the Form MQ-79 shall be annotated to indicate that such tobacco was so purchased and carried over from a crop produced prior to the current crop.

(2) For all other kinds of tobacco, each dealer shall keep a record and make reports on Form MQ-79 showing all purchases and resales of tobacco made by or for the dealer and, in the event of a purchase or resale of tobacco which is purchased prior to the current crop, the fact that such tobacco was so purchased and carried over from a crop produced prior to the current crop.

(3) A Form MQ-79 shall be prepared and a copy (together with executed copies of Form MQ-72-2 for all nonauction purchases of burley and flue-cured tobacco) shall be forwarded to the State ASCS office not later than the end of the calendar week in which such tobacco was purchased or resold. However, if tobacco is purchased prior to the opening of the local auction market, a Form MQ-79 shall be prepared and a copy, together with executed copies of Form MQ-72-2 for all nonauction purchases, shall be forwarded to the State ASCS office not later than the end of the calendar week which would include the first sale date

of the local auction markets. In addition, if tobacco is resold in a State other than where the tobacco is produced and the auction markets at such location open earlier than the auction market where the tobacco normally would be sold at auction by farmers, reports together with executed copies of Form MQ-72-2 for all nonauction purchases shall be prepared and forwarded to the State ASCS office not later than the end of the calendar week which would include the first day of the local auction market where the resale takes place.

(4) The data to be entered on Form MQ-72-2 for nonauction purchases from a producer shall be the data which is enumerated in accordance with the provisions of paragraph (c)(2) of this section.

(5) At the end of the dealer's marketing operation, but not later than April 1 for tobacco other than flue-cured and December 15 for flue-cured tobacco, such dealer shall for each kind of tobacco:

(i) Show the word "final" on the Dealer's Report, MQ-79, for the season,

(ii) Report on such "final" MQ-79 for the season the quantity of tobacco on hand and its location,

(iii) Permit its inspection by a representative of ASCS, and

(iv) Provide for weighing of such tobacco (to be witnessed by a representative of ASCS) and furnish a certification as to the actual weight of such tobacco. After the weight of such tobacco has been determined as provided in this section, it shall be considered as the official weight for comparing purchases and resales for the purpose of determining the amount of penalty, if penalty is due.

(6) Notwithstanding the provisions of paragraph (d)(5) of this section any dealer having tobacco transactions after April 1 for tobacco other than flue-cured and December 15 for flue-cured tobacco, shall make reports on MQ-79 at the end of each week, as provided in paragraph (d)(3) of this section.

(7) For burley and flue-cured tobacco, before the next marketing season begins, carryover tobacco reported by the dealer as provided in paragraph (d)(5) of this section shall be reinspected by a representative of ASCS. When the reinspection indicates an amount of carryover tobacco different from that amount determined by the initial inspection, the dealer shall provide for the weighing of such tobacco which shall be witnessed by an ASCS representative. The dealer shall furnish to such representative at the time of weighing a certification as to the actual weight of such tobacco. If an ASCS

representative determines that the weight of the tobacco is different, by reweighing, than the amount reported on the initial weight together with the reweighed quantity after taking into consideration any purchases and resales that occurred subsequent to the initial certification as provided in paragraph (d)(5) of this section shall be used for the purpose of determining penalty, if penalty is due. Penalty shall be assessed, after the initial certification and reconciliation, when the redetermined pounds exceed the amount determined by taking the initial pounds of carryover tobacco plus purchases, minus resales. The redetermined pounds shall be the official pounds to be credited to the account as carryover.

(8) In addition to Form MQ-79 and Form MQ-72-2, if applicable, a Form MQ-79 (Supplemental) shall be executed to record information relating to each purchase of tobacco for which a marketing assessment to the No Net Cost Tobacco Account is deducted from the price paid to the producer for the tobacco. The Form MQ-79 (Supplemental) shall be forwarded to the State ASCS Office at the time of forwarding the Form MQ-79 on which the purchase is recorded. A check, draft, or money order in the amount of the deduction recorded on Form MQ-79 (Supplemental) and drawn payable to Commodity Credit Corporation shall be forwarded to the State ASCS office at the same time as Forms MQ-79 and MQ-79 (Supplemental).

(e) *Daily report to warehouse operator for buyers correction account.* Notwithstanding the provisions of § 723.405 of this part, reports shall be made as follows:

(1) Any dealer, buyer, or any other person receiving tobacco from or through a warehouse operator at an auction sale or otherwise, which is not invoiced to such person or which is incorrectly invoiced to such person by the warehouse operator, shall furnish to the warehouse operator on a daily sales basis an adjustment invoice or buyers settlement sheet.

(2) Each dealer who purchases tobacco on a warehouse floor for any sale day in which there is no adjustment required in the account as shown on the warehouse bill-out invoice for that sale day, shall file a negative report with the warehouse operator for that sale day.

(3) Such reports as required under paragraphs (d)(1) and (2) of this section shall be furnished daily, if practicable (otherwise, they shall be furnished at the end of each week), and shall show the identification number of the

warehouse where the purchase was made.

(f) *Reporting of processed tobacco.* Any dealer who delivers tobacco to a firm for the purpose of redrying, processing or stemming of such tobacco shall, by the end of the week in which such tobacco was delivered, report to the State ASCS office on MQ-79, Dealer's Report:

- (1) The date delivered;
- (2) Name and address of the firm to which the tobacco was delivered, and
- (3) Pounds of tobacco (green weight) delivered which shall be entered in the resale pounds column. Such tobacco shall be considered as a resale on the date of delivery for the purpose of balancing the dealer account and collection of penalties where penalties are due.

(g) *Tobacco represented to be a nonquota kind.* Any dealer who plans to purchase tobacco that was produced on a farm in a quota area shall treat such tobacco as a quota kind of tobacco according to the provisions of this part 723 unless prior to the purchase a certification is obtained from an AMS inspector to indicate that such tobacco is a nonquota kind of tobacco. In such case, the dealer shall mail or otherwise deliver to the State ASCS office, on the date of the purchase, a copy of the AMS certification and a statement signed by the AMS inspector, the producer, and the dealer to indicate the:

- (1) State and county code and farm number of the farm on which the tobacco was produced.
- (2) Name and address of the producer.
- (3) Name and address of the dealer.
- (4) Weight of the tobacco.

§ 723.405 Dealers exempt from regular records and reports on MQ-79; and season report for dealers.

(a) Any dealer or buyer who acquires tobacco in the form in which tobacco ordinarily is sold by farmers and resells 5 percent or less of any such tobacco shall not be subject to the requirements of § 723.404 of this part except for the requirements which relate to the reporting of nonauction purchases from producers and the requirements of § 723.404(e) of this part. A dealer or buyer whose resales in the form normally marketed by producers farmers exceed 5 percent of their purchases as a direct result of order buying for another dealer for a service fee may report under paragraph (b) of this section in lieu of § 723.404 of this part (except for requirements which relate to nonauction purchases from producers and requirements of § 723.404(e) of this part.

(b) (1) This paragraph is applicable only to burley and flue-cured tobacco. Each dealer or buyer shall make a report to the Director, not later than February 1 of each year for flue-cured and April 1 for burley tobacco, showing by States where acquired, source and pounds of all tobacco, in the form normally marketed by producers, purchased at auction or nonauction including tobacco received which was not billed to the dealer or buyer. Any acquisition of tobacco in the form normally marketed by producers by the dealer or buyer during the marketing year (October 1 through September 30 for burley tobacco and July 1 through June 30 for flue-cured tobacco) which is not included in the initial report shall be reported in like manner no later than the end of the calendar week following the week in which the tobacco was acquired. The report shall show:

- (2) For purchases at auction for each warehouse;
 - (i) USDA registration number (warehouse code),
 - (ii) Name and address of warehouse,
 - (iii) Gross pounds originally billed to the buyer,
 - (iv) Gross pounds billed to the buyer for which payment was made,
 - (v) Gross pounds from the company correction account deducted for short lots and short weights and returned lots, and
 - (vi) Gross pounds from the company correction account added for long lots and long weights.
- (3) For purchases at nonauction;
 - (i) Name and address of seller (dealer or farmer),
 - (ii) Seller's number (dealer's registration number or farm number, including State and county code), and
 - (iii) Pounds purchased.

§ 723.406 Provisions applicable to damaged tobacco or to purchases of tobacco from processors or manufacturers.

(a) *Damaged tobacco.* Any dealer, warehouse operator, or other person who plans to purchase tobacco that was damaged by fire, water, or any other cause shall prior to purchase report such plans to the State ASCS office issuing Form MQ-79, Dealer's Record Book. Such report shall be timely made so that an ASCS representative can determine the marketable value of such damaged tobacco, and so that the weighing and removal of such tobacco can be witnessed by an ASCS representative. Any damaged tobacco purchased before such plans are reported to the State ASCS office and before such tobacco is inspected by an ASCS representative shall be deemed excess tobacco and penalty at the full rate shall be due.

(b) *Purchase from processor or manufacturer.* Any tobacco purchased by a dealer, warehouse operator, or other person from a processor or manufacturer shall be considered to be tobacco in the form not normally marketed by producers unless the purchaser obtains from the processor or manufacturer a certification stating that such purchased tobacco is in the form normally marketed by producers. The certification by the processor or manufacturer shall be on a form prescribed by the Deputy Administrator certifying to ASCS that the tobacco involved in the transfer of ownership is in the form normally marketed by producers. No purchase credit shall be given to a dealer, warehouse operator, or other person on MQ-79, Dealer's Record Book, for any purchase of tobacco which is not in the form normally marketed by producers. Tobacco which meets the definition of pickings as defined in this part shall be considered tobacco in the form not normally marketed by producers.

(c) *Report by dealer or warehouse operator.* Any dealer, warehouse operator or other person who plans to purchase tobacco in the form normally marketed by producers from a processor or manufacturer shall, prior to purchase, report such plans to the State ASCS office issuing form MQ-79, Dealer's Record Book, to such person. Such report shall be made timely so that a representative of ASCS may inspect the tobacco to determine its marketable value and whether the tobacco is in the form normally marketed by producers. Any tobacco purchased from processors or manufacturers before such plans are reported to the state ASCS office and before the tobacco is inspected by an ASCS representative or an inspection is declined by an ASCS representative shall be deemed excess tobacco and the penalty at the full rate shall be due.

(d) *Report by processor or manufacturer.* Each processor or manufacturer shall make a report to the Director, showing the quantity of tobacco sold in the form not normally marketed by producers to dealers and buyers other than processors or manufacturers. The report shall be filed no later than the end of the calendar week following the week in which such tobacco was sold and shall show the name of the purchaser, the date of the sale and the pounds sold.

§ 723.407 Cigar tobacco buyer's records and reports.

(a) *This section is applicable to buyers of cigar tobacco.*—(1) *Definition of cigar buyer.* With respect to this

section, a buyer is any person who buys cigar tobacco including an association or cooperative that receives tobacco from producers for the purpose of:

- (i) Selling it for the producers, or
- (ii) Placing it under price-support loan through Commodity Credit Corporation.

(2) *Report of buyer's name and address.* Each buyer shall properly execute, detach, and promptly forward to the State ASCS office, "Receipt for Buyer's Record" contained in MQ-79 (CF&B), which is issued to the buyer.

(b) *Record of purchases.* A buyer shall keep records which provide the following information for each lot of each kind of tobacco purchased or sold by the buyer, including tobacco obtained from grading tobacco for producers or furnishing curing space, or stripping space:

- (1) The name of:
 - (i) The operator of the farm on which the tobacco was produced; or
 - (ii) The name and address of the seller, in the case of a sale by a person other than the farm operator.
- (2) The identification number of the farm at/from which the tobacco was purchased.
- (3) The date of purchase.
- (4) The pounds of tobacco purchased.
- (5) The gross purchase price.
- (6) The amount of penalty.
- (7) The amount deducted for "No Net Cost Tobacco Account or Fund."

(c) *Report of sales.* Each buyer shall maintain records which will show, by kind of tobacco, the disposition of tobacco purchased under paragraph (b) of this section.

(d) *Deductions for producer contributions.* The buyer shall make deductions for producer contributions to the No Net Cost Tobacco Account or Fund as provided in part 1464 of this title. For nonauction purchases which are made by the dealer from producers, the buyer shall make a deduction in accordance with part 1464 of this title from the price paid to the producer for the tobacco. However, a deduction shall not be made if the marketing card used to identify the tobacco shows a converted penalty rate of 100 percent. The amount of the deduction which is applicable to such kind of tobacco marketed during each marketing year will be that amount per pound which is approved and announced by the Secretary as the producer contribution to the No Net Cost Tobacco Account or Fund for each such marketing year.

(e) *Identification of sale or marketing card memo and buyers records.* Each MQ-76 and each sale memo from an MQ-77 used to identify each sale of tobacco by a producer shall be properly executed by the buyer. The serial

number of the MQ-76 marketing card or sale memo from an MQ-77 to identify such tobacco, shall be recorded on the buyer's copy of the MQ-79 (CF&B) and on the check register or check stub for the check written with respect to such tobacco.

(f) *Record and report of purchases of tobacco from producers.* (1) Each buyer shall keep a record and make reports on MQ-79 (CF&B), Buyer's Record, showing by kinds of tobacco purchased by or for such buyer from producers. Such record and report shall show for each sale the sale date, the name of the farm operator, (and the name and address of the person selling the tobacco if other than the operator), the serial number of the within quota marketing card (MQ-76), and from each excess card (MQ-77), the sale memo number used to identify the sale, the pounds of tobacco represented in the sale, the rate of penalty shown on the sale memo (MQ-77), and the amount of penalty. If a marketing card is not presented by the producer, the buyer shall record and report the purchase as provided above except that the buyer shall enter the word "None" in the space for the serial number of the marketing card (MQ-76) or sale memo (MQ-77), the applicable rate of penalty per pound in the space for rate of penalty, and shall show the name and address of the seller in the space for the seller's name.

(2) The original of MQ-79 (CF&B), excess sale memos (MQ-77), and a remittance for all penalties shown by entries on MQ-79 (CF&B) and on the excess sale memos (MQ-77) to be due shall be forwarded to the State ASCS office not later than the 10th day of the calendar month next following the month during which the sale date occurred.

(3) In addition to Form MQ-79 a Form MQ-79 (Supplemental) shall be executed to record information relating to each purchase of tobacco for which a contribution to the No Net Cost Tobacco Account or Fund is deducted from the price paid to the producer for the tobacco. The Form MQ-79 (Supplemental) shall be forwarded to the State ASCS office at the time of forwarding the Form MQ-79 on which the purchase is recorded. A check, draft, or money order in the amount of the deduction recorded on Form MQ-79 (Supplemental) and drawn payable to Commodity Credit Corporation shall be forwarded to the State ASCS office at the same time as Form MQ-79 and MQ-79 (Supplemental).

§ 723.408 Producer's records and reports.

(a) *Failure to file reports or filing false reports.* (1) With respect to any kind of tobacco, if the producer on a

farm files an incomplete or incorrect report, fails to file a report, or files or aids or acquiesces in the filing of any false report with respect to the amount of such kind of tobacco produced on or marketed from the farm, applicable tobacco acreage allotment or burley farm marketing quota next established for such farm shall be reduced, unless the county and State ASC committees determine, according to instructions issued by the Deputy Administrator, that such reduction is not required.

(2) For all kinds of tobacco except burley tobacco, if a farm operator files a report of acreage of the applicable kind of tobacco on the farm and, after a determination of the acreage, it is determined by the county ASC committee (with approval of the State ASC committee) that the report was false (either significantly under reported or significantly over reported by more than the tolerance for reporting as provided in part 718 of this chapter) in what amounts to a scheme or device to defeat the purpose of the program, the allotment next established for the farm shall be reduced by an amount determined by multiplying the acreage falsely reported (difference between reported and determined acreage) by:

(i) With respect to flue-cured tobacco, the farm yield established for the farm for the year in which the false report was filed, or

(ii) For any other kind of tobacco, the actual yield per acre for the year in which the false report was filed.

(b) *Harvesting second crop tobacco from the same farm.* For all kinds of tobacco except burley, if in the same calendar year more than one crop of tobacco was grown from:

- (1) The same tobacco plants, or
- (2) Different tobacco plants, and is harvested for marketing from the same acreage of a farm, the acreage allotment next established for such farm shall be reduced by an amount equivalent to the acreage from which more than one crop of tobacco was so grown and harvested.

(c) *False identification.* If there is false identification of any kind of tobacco, the applicable farm acreage allotment or farm marketing quota next established for the farm and kind of tobacco involved shall be reduced, except that such reduction for any such farm shall not be made if the county and State ASC committees determine, according to instructions issued by the Deputy Administrator, that such reduction is not required.

(d) *Report on marketing card.* (1) The operator of each farm on which tobacco is produced shall return to the county ASCS office each marketing card issued

for the farm whenever marketings from the farm are completed and, in no event, later than,

(i) June 1 of the marketing year in the case of cigar tobacco, and

(ii) For all other kinds of tobacco, not later than 20 days after the close of the tobacco auction markets for the marketing year for the locality in which the farm is located. Failure to return the marketing card within 15 days after written request by certified mail from the county ASCS executive director shall constitute failure to account for disposition of all tobacco marketed from the farm unless disposition of tobacco marketed from the farm is otherwise accounted for to the satisfaction of the county ASC committee.

(2) For all kinds of tobacco except burley and flue-cured:

(i) At the time the marketing card is returned to the county ASCS office, the farm operator must certify with respect to each:

(A) MQ-77, to the quantity of tobacco on hand and its location.

(B) MQ-76, to the accuracy of the Record of Sales recorded on the card.

(ii) Failure of the farm operator to make the applicable certification shall constitute failure to satisfactorily account for the disposition of tobacco marketed from the farm.

(3) Upon failure to satisfactorily account to the county ASC committee for disposition of tobacco marketed from the farm the allotment or quota next established for such farm and such kind of tobacco shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county ASC committee and a representative of the State ASC committee that the failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition. However, such failure will be construed as intentional unless such proof of disposition is furnished and payment of all additional penalty is made, or no person connected with such farm for the year for which the acreage allotment or quota is being established caused, aided, or acquiesced in the failure to furnish such proof.

(e) *Report of production and disposition.* (1) In addition to any other reports which may be required by this subpart, the operator or any producer on a farm (even though the harvested acreage does not exceed the acreage allotment or even though no farm acreage allotment or farm marketing quota was established for the farm) shall, upon written request by certified mail from the State or county ASC

committee, furnish on MQ-108, Report of Production and Disposition, a written report of the acreage, production and disposition of all tobacco produced on the farm by sending the same to the State or county ASC committee within 15 days after the request was mailed showing as to the farm at the time of filing such report with respect to the applicable kind of tobacco the:

(i) Total harvested acres,

(ii) Total amount of tobacco on hand and its location,

(iii) Total pounds of tobacco produced,

(iv) Name and address of the warehouse operator, dealer, or other person to or through whom tobacco was marketed, and the number of pounds marketed, the gross price paid and the date of the marketings, and

(v) Complete details as to any tobacco disposed of other than by sale.

(2) With respect to any farm on which burley or flue-cured tobacco was produced or available for marketing from carryover tobacco, the operator or any producer on the farm (even though the harvested acreage does not exceed the flue cured farm acreage allotment or even though no farm acreage allotment or farm marketing quota was established for the farm) shall, upon written request from the county ASC committee, furnish on Form MQ-108-1, Report of Unmarketed Tobacco, a written report of the amount and location of the applicable kind of tobacco produced on the farm which is unmarketed at the end of the marketing season and the amount the applicable kind of tobacco produced by such operator or producer on any other farm, which is unmarketed at the end of the marketing season and which is stored on the farm, by sending the report to the county ASC committee within 15 days after the request was mailed to such person at such person's last known address.

(3) Failure to file the MQ-108 or MQ-108-1 as requested, or the filing of MQ-108 or MQ-108-1 which is found by the State or county ASC committee to be incomplete or incorrect shall, to the extent that it involves tobacco produced on the farm, constitute failure to account for the disposition of tobacco produced on the farm and the allotment or quota next established for such farm shall be reduced, except that such reduction shall not be made if it is established to the satisfaction of the county or State ASC committee that failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition: However, such failure will

be construed as intentional unless such proof of disposition is furnished and payment of all additional penalty is made, or no person connected with such farm for the year for which the farm acreage allotment or farm marketing quota is being established caused, aided, acquiesced in the failure to furnish such proof.

(f) *Reports by producer-*

manufacturers. (1) For all kinds of tobacco except burley and flue-cured tobacco, each producer who manufactures tobacco products from tobacco produced by or for such person as a producer, shall report to the State ASCS office with respect to each farm on which such tobacco is produced and as soon as all tobacco from the farm has been weighed as follows:

(i) If the harvested acreage is within the allotment, the producer-manufacturer shall report the total pounds of tobacco produced, the date(s) on which such tobacco was weighed, the farm serial number of the farm on which it was produced, and the estimated value of such tobacco.

(ii) If the harvested acreage is in excess of the allotment, the producer-manufacturer shall report the total pounds of tobacco produced on the farm, the date(s) on which the tobacco was weighed, the farm serial number of the farm on which it was produced, the estimated value of the tobacco, and the location of the tobacco. If the required reports are not made, penalty shall be paid on the tobacco by the producer-manufacturer, at the converted rate of penalty shown on the marketing card issued for the farm, when it is moved from the place where it can be conveniently inspected by the county ASC committee at any time separate and apart from any other tobacco.

(2) If the producer-manufacturer has excess tobacco and does not pay the penalty thereon at the converted rate of penalty shown on the marketing card, such producer-manufacturer shall notify in writing the buyer of the manufactured product or the buyer of any residue resulting from processing the tobacco, at time of sale of such product or residue, of the precise amount of penalty due on such manufactured product or residue. In such event, the producer-manufacturer shall immediately notify the State ASCS executive director and shall account for the disposition of such tobacco by furnishing the State ASCS executive director a report on a form to be furnished by such State ASCS executive director, showing the name and address of the buyer of the manufactured products or residue, a detailed account of the disposition of

such tobacco and the exact amounts of penalty due with respect to each such sale of such products or residue to indicate, together with copies of the written notice that was given to the buyer of such products or residue to indicate the exact amount of the penalty due.

(3) Failure to file the report required in paragraph (f)(2) of this section, or the filing of a report which is found by the State ASC committee to be incomplete or incorrect, shall be considered failure of the producer-manufacturer to account for the disposition of tobacco produced on the farm and the allotment next established for the farm shall be reduced for such failure, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State ASC committees, that:

(i) The failure to furnish such report of disposition was unintentional and the producer-manufacturer on such farm could not reasonably have been expected to furnish such report of disposition. However such failure will be construed as intentional unless such report of disposition is furnished and payment of all additional penalty is made, or

(ii) No person connected with such farm for the year for which the allotment is being established caused, aided, or acquiesced in the failure to furnish such report. The producer-manufacturer shall be liable for the payment of penalty.

(g) *Amount of allotment or quota reductions—(1) Burley tobacco.* For burley tobacco, the farm marketing quota determined for a farm for the current year shall be reduced by that amount of tobacco which is involved in a marketing quota violation as described in paragraphs (a), (b), (c), (d), or (e), of this section which occurred in any prior year. However, the amount of such reduction shall not exceed the current year farm marketing quota. The county ASC committee shall determine the amount of tobacco involved in the marketing quota violation. If the actual quantity of tobacco involved in such violation is unknown, the county ASC committee shall determine the quantity by considering both the condition of the crop during production, if known, and such other information as is available.

(2) *Kinds of tobacco except burley tobacco.* The amount of reduction in the allotment for the current year for a violation described in paragraphs (a), (c), (d), (e), or (f) of this section shall be that percentage, but not to exceed 100 percent, which the amount of the tobacco involved in the violation is of the respective farm marketing quota for the farm for the year in which the

violation occurred times the current year farm acreage allotment. The quantity of tobacco in violation shall be determined by the county ASC committee. If known, the actual quantity shall be determined by the county ASC committee to be the amount of tobacco involved in the violation. If the actual quantity is unknown, determine the quantity by taking into consideration the condition of the crop during production, if known, and such other information that is available.

(h) *Allotment or quota reduction for combined farms.* If the farm involved in the violation is combined with another farm prior to the reduction, the allotment or quota reduction shall be applied as heretofore provided in this section to that portion of the farm acreage allotment or farm marketing quota for which a reduction is required.

(i) *Allotment or quota reduction for divided farms.* If the farm involved in the violation has been divided prior to the reduction, the reduction shall be applied as heretofore provided in this section to the allotments or quota for the divided farms required to be reduced.

(j) *Quota reductions for flue-cured tobacco.* For flue-cured tobacco only, if an acreage allotment reduction is made under this section, the marketing quota shall be reduced to reflect such reduction in an amount determined by multiplying the acreage reduction by the farm yield.

(k) *County administrative hearing in connection with violations.* Except for the failure to return a marketing card, the allotment or quota for any farm shall not be reduced for a violation under this section until the operator of the farm has been afforded an opportunity to discuss the nature and extent of the violation with the county ASC committee. If after having been afforded an opportunity to discuss a violation with the county ASC committee the farm operator fails or refused to discuss the violation, the county ASC committee shall take action as required by this part.

(l) *Sequence of allotment or quota reductions.* For burley and flue-cured tobacco, if the tobacco farm acreage allotment or farm marketing quota for a farm is to be reduced in the current year because of both:

(1) A violation, and

(2) Overmarketings in a prior year, the reduction in the farm acreage allotment or farm marketing quota for the violation shall be made before making the reduction for overmarketings.

(m) *Correction of farm records.* For burley and flue-cured tobacco, where farm data for actual marketings are determined to be incorrect because of a violation, the records shall be corrected

for each farm on which the tobacco was produced, and for each farm whose card was used to identify marketings.

(n) *Report on Form MQ-92, Estimate of Production.* An estimate of production, Form MQ-92, shall be prepared immediately prior to harvest for each farm for which the county or State ASC committee or a representative of the county or State ASC committee believes that an MQ-92 for the farm would be in the best interests of the program. The county ASC committee shall have the authority to visit any farm for the purposes of making an estimate of production or determination of planted acreage needed to complete an estimate of production.

(o) *Effect of false identification on establishing future farm marketing quotas.* Notwithstanding any other provision of this section, with respect to burley or flue-cured tobacco, if a producer falsely identifies such tobacco as having been produced on or marketed from a farm, the quantity of the tobacco which is falsely identified shall be considered, for the purpose of establishing future farm marketing quotas, as having been produced on both the farm for which it was identified as having been produced, and the farm of actual production, if known, or, as the case may be, such quantity of tobacco shall be considered as actually marketed from the farm.

§ 723.409 Producer penalties; false identification and related issues.

(a) *Penalties for marketing over 103 percent of farm quota-burley and flue-cured tobacco.* For burley and flue-cured tobacco, a penalty at the full rate shall be due on any marketings which exceeds 103 percent of the effective farm marketing quota.

(b) *Penalties for false identification or failure to account-burley tobacco—(1) For burley tobacco.* If any producer falsely identifies or fails to account for the disposition of any tobacco produced on a farm, penalty at the full rate shall be due on the larger of the:

(i) Actual marketings above 103 percent of the effective farm marketing quota, or

(ii) Amount of tobacco equal to 25 percent of the effective farm marketing quota. The requirement of paragraph (b)(ii) of this section shall not be applied if the county ASC committee determines with concurrence of State ASC committee, that assessment of penalty based on 25 percent of the effective farm marketing quota would be unduly harsh when compared with the pounds in

violation and no adverse effect on the program would result.

(2) *For flue-cured tobacco.* If any producer falsely identifies or fails to account for the disposition of any tobacco produced on the farm, a penalty at the full rate shall be assessed on the larger of:

(i) The actual marketings above 103 percent of the effective farm marketing quota; or

(ii) The sum of pounds equal to 25 percent of the effective farm marketing quota plus the pounds determined by multiplying the farm yield times the acres harvested in excess of the effective farm acreage allotment. If such amount exceeds the amount determined in accordance with paragraph (b)(2)(i) of this section the penalty assessed may be based on the amount determined in accordance with such paragraph if the county ASC committee determines, with the concurrence with the State ASC committee, that the penalty assessed on the amount determined in accordance with this paragraph would be unduly harsh in relation to the quantity of tobacco which is falsely identified or which is not accounted for and the tobacco program would not be adversely effected.

(3) *For kinds of tobacco other than burley or flue-cured tobacco.* (i) If any producer falsely identifies or fails to account for the disposition of any kind of tobacco produced on a farm, an amount of tobacco equal to the normal yield of the number of acres harvested in the current year in excess of the farm acreage allotment for the kind of tobacco shall be deemed to have been marketed from such farm.

(ii) If any producer who manufactures tobacco products from tobacco produced by or for such person fails to make the reports or makes a false report, the producer shall be deemed to have failed to account for the disposition of tobacco produced on the farm(s) involved. The filing of a report by a producer under § 723.408 of this part which the State ASC committee finds to be incomplete or incorrect, shall constitute a failure to account for the disposition of tobacco produced on the farm.

(c) *Canceled allotment or quota.* If part or all of the tobacco produced on a farm has been marketed and the farm acreage allotment or farm marketing quota for the farm is canceled, any penalty due on the marketings shall be paid by the producers.

(d) *Overmarketing proportionate share of effective farm marketing quota—burley or flue-cured tobacco.* With respect to burley or flue cured tobacco, if the county ASC committee determines

that the farm operator or another producer on the farm has marketed more than 103 percent of such operator's or producer's share of the effective farm marketing quota with intent to deprive some other producer on the farm from marketing such producer's proportionate share of the same crop of tobacco, such operator or other producer shall be liable for marketing penalties at the full rate per pound for each pound of tobacco marketed above 103 percent of such producer's share of the effective farm marketing quota. However, the sum of such penalties shall not exceed the total penalties due on total marketings above 103 percent of the effective farm marketing quota for the farm on which such tobacco was produced. Before assessment of penalty pursuant to this paragraph, a hearing shall be scheduled by the county ASC committee and the operator and affected producers shall be invited to be present, or to be represented, to determine whether the operator or another producer on the farm has marketed more than 103 percent of such person's proportionate share of the effective farm marketing quota. The notice of the hearing shall request the farm operator and affected producers to bring to the hearing floor sheets and other relevant supporting documents. At least two members of the county ASC committee shall be present at the hearing. The hearing shall be held at the time and place named in the notice and any action taken to impose penalty shall be taken after the hearing. If the farm operator or other affected producer does not attend the hearing, or is not represented, the county ASC committee shall make a determination on the basis of available records and shall assess any penalties that may be required against the applicable person.

(e) *Penalties not to be assessed—burley or flue-cured tobacco.* With respect to burley or flue-cured tobacco, if the operator or another producer on the farm markets a quantity of tobacco above 103 percent of the effective farm marketing quota for the farm and such overage is found to have been caused by the failure to record or improper recording of tobacco poundage data on the marketing card, that amount of the penalty as was due to such failure to record or improper recording will not be required to be paid by the farm operator or other producer if:

(1) For amounts of \$10 or less, the county ASC committee, and

(2) For amounts over \$10, the county ASC committee, with the approval of the State ASC committee, determines that each of the following conditions is applicable:

(i) The failure to record or incorrect recording resulted from action or inaction of a marketing recorder or another ASCS employee, and

(ii) The farm operator or another producer on the farm had no knowledge of such failure or error. Overmarketings for a farm for which the marketing penalty will not be paid pursuant to the provisions of this paragraph shall be determined based upon the correct effective farm marketing quota and correct actual marketings of tobacco from the farm.

(f) *Ineligible for price support.* A penalty at the full rate announced for a kind of tobacco for the current marketing shall be assessed on any marketing of any kind of tobacco by any producer on a farm if such producer is ineligible for price support because the farm operator or other producer on the farm has not agree to make a contribution to the No Net Cost Fund or pay an assessment to the No Net Cost Account, as applicable, in accordance with part 1464 of this title.

(g) *Person to pay penalty when erroneous rate is shown on card (except burley and flue-cured tobacco).* If an erroneous penalty rate is shown on a marketing card and tobacco is identified by such card, the producer shall remit any additional penalty due for the sale.

§ 723.410 Penalties considered to be due from a warehouse operator, dealers, buyers, and others excluding the producer.

Any marketing of tobacco under one of the following conditions shall be considered to be a marketing of excess tobacco.

(a) *Auction sale without burley or flue-cured tobacco marketing card.* For burley and flue-cured tobacco, any first marketing of tobacco at an auction sale by a producer which is not identified by a valid marketing card at the time of marketing shall be considered to be a marketing of excess tobacco and the penalty thereon shall be collected and remitted by the warehouse operator unless prior to marketing, an AMS inspection certificate is obtained showing that the tobacco is of a kind not subject to marketing quotas.

(b) *Auction sale without dark air-cured, fire-cured, or Virginia sun-cured tobacco marketing card.* For dark air-cured, fire-cured, or Virginia sun-cured tobacco, any first marketing of tobacco at an auction sale by a producer which is not identified by a valid marketing card (MQ-76 or MQ-77 (including sale memo)) on or before the last warehouse sale day of the marketing season, or within 4 weeks following the date of marketing, whichever comes first, shall

be identified by an MQ-82, and shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by the warehouse operator.

c. Burley or flue-cured tobacco nonauction sale. For burley and flue-cured tobacco, any nonauction marketing of tobacco which:

(1) Is not identified by a valid marketing card and recorded at the time of marketing on MQ-79, Dealer's Report, the marketing card, and MQ-72-2, Report of Tobacco Nonauction Purchase; or,

(2) If purchased prior to the opening of the local auction market for the current year, it is not identified by a valid marketing card and recorded on MQ-79, the marketing card, and MQ-72-2, Report of Tobacco Nonauction Purchase not later than the end of the calendar week which includes the first sale day of the local auction markets, shall be considered a marketing of excess tobacco. The penalty thereon shall be collected by the purchaser of such tobacco, and remitted with MQ-79, unless prior to marketing an AMS inspection certificate is obtained showing that the tobacco is of a kind not subject to marketing quotas.

(d) Nonauction sale, except burley, flue-cured, and cigar tobacco. For dark air-cured, fire-cured, or Virginia sun-cured tobacco, any nonauction sale of tobacco which:

(1) Is not identified by an MQ-76 or MQ-77 (including a valid sale memo); and

(2) Recorded on MQ-79, Dealer's Record, not later than the end of the calendar week in which the tobacco was purchased; or

(3) If purchased prior to the opening of the local auction market for the current year, is not identified by an MQ-76 or MQ-77 (including a valid sale memo) and recorded on MQ-79 not later than the end of the calendar week which includes the first day of the local auction markets, shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by the purchaser of such tobacco.

(e) Failure to obtain an MQ-76 and sale memo, and failure to record a sale on MQ-76-cigar tobacco. Any sale of cigar tobacco for which a dealer:

(1) If within quota, fails to record the sale on the marketing card issued for the farm, or

(2) If the tobacco was produced on a farm for which an excess marketing card was issued, fails to obtain a valid sale memo by the end of the sale date, shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by the

buyer who fails to make the required record.

(f) Leaf account tobacco. If warehouse resales exceed prior leaf account purchases, such marketings shall be considered to be a marketing of excess tobacco unless such warehouse operator furnishes evidence acceptable to the State ASC committee showing that such marketing is not a marketing of excess tobacco. However, evidence acceptable to the State ASC committee shall not be based on the warehouse operator's proof of purchase of tobacco that is not in the form normally marketed by producers even though such evidence indicates that resales exceed prior leaf account purchases as a result of the blending of tobacco, which was not in the form normally marketed by producers, with the warehouse operator's prior purchases of leaf account tobacco.

(g) Dealer tobacco-burley or flue-cured. The burley or flue-cured tobacco resales by a dealer (as shown or due to be shown on Form MQ-79), which are in excess of such dealer's total prior purchases of the respective kind of tobacco (as shown or due to be shown on Form MQ-79) shall be considered to be a marketing of excess tobacco and penalty thereon shall be due at the time the marketing takes place which results in the excess. If the resale which results in penalty being due is made at auction, the warehouse shall deduct the penalty from the proceeds of the sale and shall remit the penalty to the marketing recorder. Penalty due which is not withheld by a warehouse operator shall be remitted weekly by the dealer to the State ASCS office with his reports on Form MQ-79.

(h) Resales not reported. Any resale of tobacco which is required to be reported by a warehouse operator or dealer, but which is not reported within the time and in the manner required, shall be considered to be a marketing of excess tobacco, unless and until such warehouse operator or dealer furnishes proof of such resale which is acceptable to the State ASCS executive director. The penalty thereon shall be paid by the warehouse operator or dealer who fails to make the report as required.

(i) Marketing falsely identified by a person other than the producer of the tobacco. If any marketing of tobacco by a person other than the producer is identified by a marketing card other than the marketing card issued for the farm on which the tobacco was produced, and the source of production of the tobacco is unknown, such marketing shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The marketing quota penalty

shall be paid by the person who marketed the tobacco.

(j) Carryover tobacco, except cigar tobacco. Any tobacco on hand, except for cigar tobacco, and reported or due to be reported under § 723.403 of this part for warehouse operators and § 723.404 of this part for dealers shall be included as a resale in determining whether an account for a kind of tobacco has excess resales. Unless the warehouse operator furnishes proof acceptable to the State ASC committee and unless the dealer furnishes proof acceptable to the State ASCS executive director, showing that such account does not represent excess tobacco, penalty at the full rate for the respective kind of tobacco shall be paid thereon by such warehouse operator or dealer.

(k) Unrecorded sale of cigar tobacco. Any sale of cigar tobacco which is not recorded on MQ-79 (CF&B), Buyer's Record Book, by the 10th day of the month following the month during which the sale dated occurred shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by the buyer who fails to make the record.

(1) Floor sweepings. Any person who markets floor sweepings in excess of allowable floor sweepings shall be subject to a civil penalty of 150 percent of the average market price for the immediately preceding marketing year, as determined by the U.S. Department of Agriculture. The calculated penalty rate shall be rounded to the nearest whole cent. Any floor sweepings on hand more than 30 days (15 days with respect to flue cured tobacco) after the warehouse closes for the auction season shall be considered marketed. The floor sweepings on hand shall be weighed by the warehouse operator and the weight shall be certified by the warehouse operator, such weighing to be done in the presence of a representative of either the county ASC committee or State ASC committee. Floor sweepings which are destroyed in the presence of a representative of the county ASC committee, within 30 days (15 days with respect to flue-cured tobacco) after the warehouse closes shall not be considered as marketed when determining the quantity of floor sweepings marketed. If the county ASC committee determines, after the warehouse has been closed for the auction season for more than 30 days (15 days with respect to flue-cured tobacco), that the cumulative quantity of floor sweepings marketed and considered marketed in the current marketing year is in excess of the allowable floor sweepings, the person responsible for

such marketings shall be given notice of the determination and shall be afforded an opportunity to request reconsideration of such determination in accordance with the provisions of part 780 of this chapter. A determination that a civil penalty is due for marketing floor sweepings in excess of the allowable floor sweepings shall not become final and shall not be assessed until such person has been afforded an opportunity for a hearing and such person has exhausted the applicable administrative remedies. The notice of assessment shall require such person to pay the civil penalty to the "Agricultural Stabilization and Conservation Service, USDA" within 15 days after the mailing of the notice.

(m) *Blending tobacco not in the form normally marketed by producers-burley and flue-cured tobacco.* Tobacco purchased from processors or manufacturers that is considered not in the form normally marketed by producers that is blended with tobacco in the form normally marketed by producers shall not be credited as a purchase to the dealer's or warehouse operator's account by the State ASC committee when reconciling the warehouse operator's leaf account or the dealer's purchases and resales. Tobacco not in the form normally marketed by producers that is blended with other tobacco shall be deemed to be excess tobacco and penalty shall be due on the pounds of tobacco by which a warehouse operator's or dealer's resales exceed prior purchases.

§ 723.411 Records and reports regarding hauling, processing, and storage of tobacco.

(a) *Trucker records.* Each trucker shall keep such records as will enable such trucker to furnish the State ASCS office a report with respect to each lot of tobacco received by such trucker showing:

- (1) The name and address of the producer;
- (2) The date of receipt of the tobacco;
- (3) The number of pounds received;
- (4) The location where received; and
- (5) The name and address of the person to whom it was delivered.

(b) *Processor records.* Each firm engaged in the business of processing tobacco shall keep records with respect to each lot of tobacco received by such firm showing:

- (1) The name and address of producer, dealer, warehouse operator, or other person for whom the tobacco was received.
- (2) The date of receipt of tobacco.
- (3) The number of pounds (green weight) received.

(4) The purpose for which tobacco was received (redrying or stemming)

(5) The amount of any advance or loan made by such person on the tobacco.

(6) The disposition of the tobacco including the net weight of the tobacco processed and the number of containers by classification (strips, stems, scrap or leaf.)

(7) Person to whom delivered and pounds involved.

Any such firm shall report this information to the State ASCS office of the State in which the business is located within 15 days of the end of the marketing year, except for tobacco handled for an association operating the price support program and tobacco purchased at auction or tobacco which was previously reported on Form MQ-79. Where such firm qualifies for the exemption in § 723.405 of this part, such firm is required to report only such tobacco received that does not belong to such firm.

(c) *Records for stored tobacco.* Each firm engaged in storing unprocessed tobacco shall keep records with respect to each lot of unprocessed tobacco received by such firm showing:

- (1) The name and address of producer, dealer, warehouse operator, marketing agent or other person for whom the tobacco was received
- (2) The date and receipt of the tobacco;
- (3) The number of pounds received;
- (4) The amount of any advance or loan made by such firm;
- (5) The disposition of the tobacco; and
- (6) The person to whom delivered and the pounds involved.

Any such firm shall report this information to the State ASCS office of the State in which the business is located within 15 days of the end of the marketing year, except for tobacco handled for an association operating the price support program and tobacco purchased by such firm at auction or for which such firm had previously reported on Form MQ-79. Where such firm qualifies for the exemption in § 723.405 of this part, the firm is only required to report such tobacco received for storage that does not belong to such firm.

§ 723.412 Separate records and reports from persons engaged in tobacco related businesses.

Any person who is required to keep any record or make any report as a warehouse operator, dealer, buyer, trucker, or as a person engaged in the hauling, processing, or storage of tobacco, and who is engaged in more than one such business, shall keep such records as will enable such person to

make separate reports for each such business in which such person is engaged to the same extent for each such business as if the person were engaged in no other business.

§ 723.413 Length of time records and reports are to be kept.

Records to be kept and copies of the reports required to be made by any person under this subpart shall be on a marketing year basis and shall be retained for 3 years after the end of the marketing year. Records shall be kept for such longer period of time as may be requested in writing by the State ASCS executive director, or the Director.

§ 723.414 Failure to keep records and make reports or making false report or record.

(a) (1) *Failure to keep records and make reports.* Under the provisions of section 373(a) of the Act, any warehouse operator, processor, buyer, dealer, trucker, or person engaged in the business of sorting, redrying, stemming, packing, or otherwise processing tobacco who fails to make any report or keep any record as required, or who makes any false report or record, is guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than \$500 for each offense. In addition, any tobacco warehouse operator, dealer, or buyer who fails, upon being requested to do so, to remedy a violation by submitting complete reports and keeping accurate records shall be subject to an additional fine, not to exceed \$5,000.

(2) *Failure to obtain producer marketing card or sale memo.* The failure of any dealer or warehouse operator to obtain a:

(i) Producer's marketing card, MQ-76 and MQ-77, to identify a sale of producer tobacco, or

(ii) Dealer identification card, MQ-79-2, to cover a resale of tobacco, shall constitute a failure to make a report.

(b) *False representation-warehouse operators, dealers, and processors.* The monetary penalties described in this part are in addition to penalties prescribed by other criminal statutes including 18 U.S.C. 231 which provides for a fine of not more than \$10,000 or imprisonment for not more than 5 years, or both, for a person convicted of knowingly and willingly committing such acts as making a false acreage report, altering a marketing card, falsely identifying tobacco or buying and selling unused "103 percent of quota poundage" on marketing cards.

§ 723.415 Examination of records and reports.

For the purpose of ascertaining the correctness of any report made or record kept, or of obtaining the information required to be furnished, in any report, but not so furnished, any warehouse operator, processor, dealer, buyer, trucker, or person engaged in the business of sorting, redrying, stemming, picking, or otherwise processing tobacco for producers, shall make available at one place for examination by representatives of the State ASCS executive director and by employees of the Office of Investigation and Office of Audit, and of the Tobacco and Peanuts Division of the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture upon written request by the State ASCS executive director, all such books, papers, records, lot tickets, tobacco sale bills, buyer adjustment invoices, accounts, canceled checks, check register, check stubs, correspondence, contracts, documents, warehouse bill-out invoices or daily summary journal sheet, the tissue copy of Form MQ-72-1, Report of Tobacco Auction Sale, journal of producer marketing cards retained at warehouse and memoranda as the State ASCS executive director has reason to believe are relevant and are within the control of such person.

§ 723.416 Information confidential.

All data reported to or acquired by the Secretary pursuant to the provisions of this subpart shall be kept confidential by all officers and employees of the U.S. Department of Agriculture, by all members of county and community committees, and all county ASCS office employees. Only such data so reported or acquired as the Deputy Administrator deems relevant shall be disclosed by them, and then only in a suit or administrative hearing under title III of the Act. The provisions of this section shall not be deemed to prohibit the issuance of general statements based upon the report of a number of parties which statements do not identify the information furnished by any person.

Signed in Washington, DC, on June 12, 1990.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 90-14083 Filed 6-19-90; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service**7 CFR Part 946**

[Docket No. FV-90-164]

Irish Potatoes Grown in Washington; Proposed Rule To Reduce Minimum Weight Requirement for Long Varieties

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would reduce the minimum weight requirement for long varieties of Washington potatoes from 5 ounces to 4 ounces during the July 15 through August 31 period each season. Potato varieties currently being grown for the early market are longer and slimmer than those previously grown for that market. These potatoes often have difficulty meeting the current minimum size requirement of 2½ inches in diameter or 5 ounces in weight. Reducing the minimum weight requirement would recognize the difference in shape of these newer varieties and enable handlers to market a larger portion of their crop in fresh outlets.

DATES: Comments must be received by July 2, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 447-2431.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 113 and Marketing Order No. 946 (7 CFR part 946) regulating the handling of Irish potatoes grown in Washington. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 55 handlers of Washington potatoes subject to regulation under the marketing order and approximately 520 producers in the production area. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers of Washington potatoes may be classified as small entities.

In recent years, annual potato production in Washington has averaged about 64 million hundredweight. About 65 percent of the crop is processed, and the remaining 15 percent is marketed in fresh outlets. Fresh shipments are comprised mainly of Russet Burbanks, Norgold Russets and Norkotah Russets, all of which are categorized as long varieties. Russet Burbanks, which account for about 65 percent of total fresh shipments, are harvested in the fall, with shipments beginning in September and continuing through the following June or early July. The largest shipments of Norgold Russets, Norkotah Russets and other early varieties are in July, August and September.

Handling requirements for fresh shipments of Washington potatoes are specified in 7 CFR 946.336 (46 FR 39117, July 31, 1981, as amended at 54 FR 27864, July 3, 1989, and 54 FR 41586, October 11, 1989). All varieties are required to grade at least U.S. No. 2. Long varieties are required to meet a minimum size requirement of 2½ inch in diameter or 5

ounces in weight from July 15 through August 31 each season, and 2 inches in diameter or 4 ounces in weight during the rest of the season.

At its meeting on April 24, 1990, the State of Washington Potato Committee (committee), the agency responsible for local administration of the marketing order, recommended reducing the minimum weight requirement for long varieties from 5 ounces to 4 ounces during the period July 15 through August 31, when early crop shipments are made. This would result in the same minimum weight requirement being in effect throughout the season.

When the current size requirements for long varieties were first established, the Norgold Russet was the primary variety being grown for the early market (i.e., the months of July and August). This variety is more round and blocky in shape than the Russet Burbank, the primary variety grown for the later market, and a larger minimum size requirement was appropriate. Additionally, the larger size requirement during the early part of the season was supported as a means of increasing demand for Washington potatoes during the period and to ensure that the early varieties were not harvested and shipped before they were fully mature.

However, several newer varieties are now being grown for the early market, such as the Norkotah Russet and Hilite Russet. These varieties have a more elongated and slimmer shape than the Norgold Russet. The shape of these varieties is more comparable to that of the Russet Burbank variety. Therefore, the committee recommended that the long variety potatoes marketed during the July 15 to August 31 period be subject to the same minimum weight requirement as those marketed later in the season. However, the committee recommended retaining the 2½ inch minimum diameter requirement for long varieties marketed during the period July 15 through August 31 since a significant quantity of Norgold Russet potatoes are still being grown for the early market.

In recent years, other production areas have also started growing these new early season varieties and are now competing in the same markets as Washington potatoes. The committee recommended reducing the minimum weight requirement to help early season shippers meet competition from other producing areas without a general lowering of quality which would ultimately work against the Washington potato industry. This action would also make the minimum weight requirement of 4 ounces the same for all Washington

potato shippers throughout the marketing season.

Therefore, it is proposed that § 946.336 (a)(2)(ii) be revised to reduce the minimum weight of long varieties of early season potatoes from 5 ounces to 4 ounces. A conforming change would be made in paragraph (a)(2)(iii) with respect to tolerances.

Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

It is hereby found that a comment period of 10 days is appropriate in that (1) this proposal was discussed by the committee at a public meeting, (2) the early shipping season usually begins in early July and this change would affect early season shippers, and (3) the proposal relaxes a size requirement.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 946 be amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Part 946 is amended by revising paragraphs (a)(2) (ii) and (iii) as follows:

§ 946.336 Handling regulation.

* * * * *

(a) * * *

(2) * * *

(ii) *Long varieties*—All long varieties must be 2½ inches (54.0 m.m.) in minimum diameter or 4 ounces minimum weight * * *

(a)(2)(iii) *Tolerances*—The tolerances for size contained in the U.S. Standards for Grades of Potatoes shall apply, except that for long varieties of potatoes packaged in other than 50-pound cartons and which are packed to meet a minimum size and weight of 2½ inches or 4 ounces, a 3 percent tolerance for undersize shall apply.

* * * * *

Dated: June 14, 1990.

Robert C. Keeney,
Deputy, Director, Fruit and Vegetable
Division.

[FR Doc. 90–14207 Filed 6–19–90; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Parts 308, 318, 320 and 381

[Docket Number 89–007C]

RIN 0583–AB14

Processing, Distribution, Storage, and Retail Handling of Ready-to-Eat, Uncured, Perishable Meat and Poultry Products Packaged in Sealed Containers; Correction

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking; Correction.

SUMMARY: On May 14, 1990, the Food Safety and Inspection Service (FSIS) published an advance notice of proposed rulemaking (55 FR 19888) requesting comments, information, scientific data and recommendations on whether FSIS should propose new regulations governing ready-to-eat, uncured, perishable meat and poultry products packaged in a variety of sealed containers bearing a "Perishable, Keep-Refrigerated" or similar statement. While discussing recommendations made by the National Advisory Committee on Microbiological Criteria for Foods, one recommendation was miscited as referring only to "rigid metal or glass" containers. This notice corrects the cited recommendation to make clear that it refers to "containers traditionally used for the marketing of shelf stable foods," and is not limited to containers of rigid metal or glass.

FOR FURTHER INFORMATION CONTACT: Ralph Stafko, Director, Policy Office, Policy Evaluation and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 447–8168.

SUPPLEMENTARY INFORMATION: On May 14, 1990, FSIS published an advance notice of proposed rulemaking (55 FR 19888) soliciting comments, information, scientific data and recommendations concerning whether FSIS should propose new regulations governing ready-to-eat, uncured, perishable meat and poultry products packaged in a variety of sealed containers bearing a "Perishable, Keep-Refrigerated" or similar statement. The National Advisory Committee on Microbiological Criteria for Foods in its final report made several recommendations concerning packaging systems, distribution, refrigeration equipment, labeling, education and research which were discussed in the advance notice. Among these was a recommendation that the use of containers traditionally used for the